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[Petitioners' Proposed] Findings of Fact and Conclusions of Law 07-2-02323-2-105

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KING COUNTY
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CASE NUMBER: 07-2-02323-2 SEA

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

Honorable John Erlick

No. 07-2-02323-2 SEA

[PETITIONERS' PROPOSED]
FINDINGS OF FACT AND
CONCLUSIONS OF LAW

MATHEW & STEPHANIE MCCLEARY, on their own
behalf and on behalf of KELSEY & CARTER
MCCLEARY, their two children in Washington's
public schools; ROBERT & PATTY VENEMA, on their
own behalf and on behalf of HALIE & ROBBIE
VENEMA, their two children in Washington's public
schools; and NETWORK FOR EXCELLENCE IN
WASHINGTON SCHOOLS ("NEWS"), a state-wide
coalition of community groups, public school
districts, and education organizations,

Petitioners,

v.

STATE OF WASHINGTON,

Respondent.

[PROPOSED] FINDINGS OF FACT & CONCLUSIONS OF LAW

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TABLE OF CONTENTS

I.	INTRODUCTION	4
II.	THE COURT’S FINDINGS OF FACTS AND CONCLUSIONS OF LAW	5
A.	PRELIMINARY MATTERS: THE PARTIES, JURISDICTION, VENUE, & BURDENS OF PROOF	6
	(a) Findings of Fact Concerning the Parties, Jurisdiction, Venue, & Burdens of Proof	6
	(i) <i>Short procedural history of this case</i>	6
	(ii) <i>The McCleary family</i>	6
	(iii) <i>The Venema family</i>	7
	(iv) <i>The Network for Excellence in Washington Schools (“NEWS”)</i>	7
	(b) Conclusions of Law Concerning the Parties, Jurisdiction, Venue, & Burdens of Proof	20
B.	GENERAL BACKGROUND: THE IMPORTANCE OF EDUCATION IN OUR STATE’S DEMOCRACY	21
	(a) Findings of Fact Concerning the Importance of Education in our State’s Democracy	21
	(b) Conclusions of Law Concerning the Importance of Education in our Democracy	29
C.	SPECIFIC BACKGROUND: ARTICLE IX, §1 OF THE WASHINGTON STATE CONSTITUTION	32
	(a) Background Findings of Fact Concerning Article IX, §1	32
	(b) Background Conclusions of Law Concerning Article IX, §1	32
D.	QUESTION #1 (DECLARATORY JUDGMENT): WHAT IS THE CORRECT INTERPRETATION OF “PARAMOUNT”, “AMPLE”, AND “ALL” IN ARTICLE IX, §1?	33
	(a) Findings of Fact relating to the interpretation of “paramount”, “ample”, and “all” in Article IX, §1.	33
	(b) Conclusions of Law concerning the legal interpretation of the words “paramount”, “ample”, and “all” in Article IX, §1.	34
	(i) <i>Judicial branch’s duty to interpret words used in the State Constitution</i>	34

1	(ii)	"paramount"	35
2	(iii)	"ample"	36
3	(iv)	"all"	37
4	E.	QUESTION #2 (DECLARATORY JUDGMENT): WHAT IS THE	
5		CURRENT LEGAL MEANING OF THE WORD "EDUCATION" IN	
6		ARTICLE IX, §1?	38
7	(a)	Findings of Fact relating to the current legal	
8		meaning of the word "education" in Article IX, §1.	38
9	(i)	<i>First Milepost (1978): State Supreme Court</i>	
10		<i>establishes the <u>minimum</u> knowledge and skills</i>	
11		<i>encompassed by the term "education" in</i>	
12		<i>Article IX, §1 [a "basic education"].....</i>	<i>38</i>
13	(ii)	<i>Second Milepost (1993): State legislature enacts</i>	
14		<i>House Bill 1209, which specifies <u>additional</u></i>	
15		<i>substantive content <u>beyond</u> the "minimum"</i>	
16		<i>substance established by the State Supreme</i>	
17		<i>Court's 1978 ruling.</i>	<i>40</i>
18	(iii)	<i>Third Milepost: State adopts Essential Academic</i>	
19		<i>Learning Requirements based on House Bill 1209,</i>	
20		<i>which specify additional substantive content</i>	
21		<i>beyond the "minimum" substance established by</i>	
22		<i>the State Supreme Court's 1978 ruling</i>	<i>42</i>
23	(b)	Conclusions of Law relating to the current legal	
24		meaning of the word "education" in Article IX, §1.	43
25	(i)	<i>The <u>minimum</u> meaning of the word "education"</i>	
26		<i>established by the Washington Supreme Court.</i>	<i>43</i>
	(ii)	<i>The additional specification of basic knowledge</i>	
		<i>and skills added by the State legislature's</i>	
		<i>enactment of the four numbered provisions of</i>	
		<i>House Bill 1209.</i>	<i>45</i>
	(iii)	<i>The additional specification of basic knowledge</i>	
		<i>and skills added by the State's adoption of the</i>	
		<i>Washington's Essential Academic Learning</i>	
		<i>Requirements (EALRs).</i>	<i>46</i>
	(iv)	<i>Conclusion regarding the current legal meaning</i>	
		<i>of the word "education" in Article IX, §1 of the</i>	
		<i>Washington Constitution.</i>	<i>46</i>

F.	QUESTION #3 (DECLARATORY JUDGMENT): IS THE RESPONDENT STATE CURRENTLY COMPLYING WITH ITS LEGAL DUTY UNDER THIS COURT'S INTERPRETATION OF THE LANGUAGE IN ARTICLE IX, §1?	47
(a)	Findings of Fact relating to whether the State is currently complying with its legal duty under this Court's interpretation of the language in Article IX, §1.	47
(b)	Conclusions of Law relating to whether the State is currently complying with its legal duty under this Court's interpretation of the language in Article IX, §1	50
G.	QUESTION #4 (ENFORCEMENT ORDER): WHAT (IF ANY) ORDER SHOULD THIS COURT ENTER TO UPHOLD AND ENFORCE THE STATE'S LEGAL DUTY UNDER ARTICLE IX, §1 OF THE WASHINGTON CONSTITUTION?	54
(a)	Findings of Fact relating to the propriety of a Court Order.	55
(b)	Conclusions of Law relating to the propriety of a Court Order	56
III.	CONCLUSION	57

I. INTRODUCTION

1. The State of Washington Superior Court held a non-jury trial in this case, with the Honorable John P. Erlick presiding. Trial commenced with opening statements on Monday, August 31, 2009, and concluded with closing arguments on Thursday, October 15, 2009.

2. The Petitioners were represented by Thomas F. Ahearne, Christopher Emch, Edmund Robb, Kelly Lonergan, and Adrian Winder of Foster Pepper PLLC. The Respondent was represented by Senior Assistant Attorney General William G. Clark, Senior Assistant Attorney General David Stoller, Senior Assistant Attorney General Carrie Bashaw, Assistant Attorney General Dierk Meierbachtol of the Office of the Washington Attorney General. The Respondent State was also represented by John R. Munich and Jamie L. Boyer of the St. Louis, Missouri law firm of Stinson Morrison Hecker LLP. The issues of public importance in this case were fully, vigorously, and ably litigated and briefed by the parties and their counsel.

3. The Petitioners based their case on Article IX, §1 of the Washington State Constitution. That constitutional provision states in full:

It is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex.

Trial Exhibit 1.

4. The four-part remedy that the Petitioners seek in this case presents four fundamental questions for this Court to resolve. Those four questions are:

Question #1 (declaratory judgment):

What is the correct interpretation of the words “paramount”, “ample”, and “all” in Article IX, §1 of the Washington State Constitution?

Question #2 (declaratory judgment):

What is the correct interpretation of the word “education” in Article IX, §1 of the Washington State Constitution?

Question #3 (declaratory judgment):

Is the Respondent State currently complying with its legal duty under this Court’s interpretation of the language in Article IX, §1?

1 **Question #4 (enforcement Order):**

2 If the Respondent State is not currently complying with its legal duty under
3 this Court's interpretation of Article IX, §1, what (if any) Order should this
4 Court enter to uphold and enforce the State's legal duty?

5 5. The Court heard testimony and considered evidence from the witnesses listed on
6 the attached Exhibit A *[finalize and attach once trial over]*.

7 6. The Court admitted into evidence and considered the trial exhibits listed on the
8 attached Exhibit B *[finalize and attach once trial over]*.

9 **II. THE COURT'S FINDINGS OF FACTS AND CONCLUSIONS OF LAW**

10 7. Having heard and considered the testimony and other evidence presented at trial,
11 and having considered the legal memoranda and arguments of counsel, the Court enters these
12 Findings Of Fact And Conclusions Of Law ("Findings & Conclusions") in accordance with
13 Washington Superior Court Civil Rule 52.

14 8. Any "finding of fact" that is more properly characterized as a "conclusion of law"
15 should be considered a "conclusion of law" if necessary to prevent its being ignored or
16 disregarded. Similarly, any "conclusion of law" that is more properly characterized as a "finding
17 of fact" should be considered a "finding of fact" if necessary to prevent its being ignored or
18 disregarded.

19 9. This Court recognizes that due to the public's significant interest in this case, the
20 Findings & Conclusions entered in this case may be read more widely by lay members of the
21 public than the Findings & Conclusions entered in most other civil cases. These Findings &
22 Conclusions therefore are not organized in the run-on format that courts and lawyers are
23 commonly accustomed to drafting and digesting in most civil cases (i.e., one long list of assorted
24 factual findings for all issues and contentions in the case, followed by a second long list of
25 assorted legal conclusions). Instead, to better focus this Court's Findings & Conclusions and
26 make them more understandable to the lay members of the public reading them, these Findings
 & Conclusions are subdivided into separate sections by primary subject matter, with the factual

1 findings and legal conclusions relating to each subject matter grouped together in a single
2 section. Each finding of fact and each conclusion of law in this document, however, relates to
3 this case as a whole.

4 **A. PRELIMINARY MATTERS:**
5 **the Parties, Jurisdiction, Venue, & Burdens of Proof**

6 **(a) Findings of Fact Concerning the Parties, Jurisdiction, Venue, & Burdens of Proof**

7 **(i) *Short procedural history of this case.***

8 10. Petitioners filed their Petition For Declaratory Judgment Enforcing Our
9 Constitution on January 11, 2007. The State filed its Answer on February 14, 2007.

10 11. This Court denied the parties' extensively briefed summary judgment requests on
11 August 24 and September 20, 2007. In light of those summary judgment proceedings, this Court
12 entered an Order on September 24, 2007 lifting the discovery stay in this case and setting a
13 March 2, 2009 trial date.

14 12. Petitioners filed an *Amended* Petition For Declaratory Judgment Enforcing Our
15 Constitution on December 6, 2007. The State filed its **first** Answer to the *Amended* Petition on
16 December 31, 2007. The State filed its **Amended** Answer to the Petitioners' *Amended* Petition
17 on August 7, 2008. After a status conference with counsel, the Court entered an Order on
18 August 26, 2008 setting a June 1, 2009 trial date for this case. That trial date was subsequently
19 rescheduled to the August 31, 2009 date upon which the trial of this case began.

20 **(ii) *The McCleary family.***

21 13. Petitioners Matt and Stephanie McCleary are Washington State citizens, voters,
22 and taxpayers. They reside in Jefferson County, Washington with their two children, Carter and
23 Kelsey. Matt and Stephanie McCleary brought this action on their own behalf, and as legal
24 guardians on behalf of their son Carter and daughter Kelsey.

25 14. Carter and Kelsey McCleary attend the State's public schools.

1 Carter McCleary was a 7-year-old second grader at Chimacum Creek Primary School
2 when this suit was filed. When this case went to trial, he was a 10-year-old fifth grader at
3 Chimacum Elementary School.

4 Kelsey McCleary was a 13-year-old seventh grader at Chimacum Middle School when
5 this suit was filed. Kelsey's mom was 13 when the Washington Supreme Court issued the
6 *Seattle School District* decision discussed later in these Findings & Conclusions. When this case
7 went to trial, Kelsey was a 15-year-old sophomore at Chimacum High School.

8 ***(iii) The Venema family.***

9 15. Petitioners Robert and Patty Venema are Washington State citizens, voters, and
10 taxpayers. They reside in Snohomish County, Washington with their two children, Robbie and
11 Halie. Robert and Patty Venema brought this action on their own behalf, and as legal guardians
12 on behalf of their son Robbie and daughter Halie.

13 16. Robbie and Halie Venema attend Washington public schools.

14 Robbie Venema was a 12-year-old sixth grader at Cathcart Elementary School when this
15 suit was filed. When this case went to trial, he was a 14-year-old freshman at Glacier Peak High
16 School.

17 Halie Venema was a 15-year-old freshman at the freshman campus of Snohomish High
18 School when this suit was filed. Halie's mom was in high school when the Washington Supreme
19 Court issued the *Seattle School District* decision discussed later in these Findings & Conclusions.
20 When this case went to trial, Halie was a 17-year-old senior at Glacier Peak High School.

21 ***(iv) The Network for Excellence in Washington Schools ("NEWS").***

22 17. Petitioner Network for Excellence in Washington Schools ("NEWS") is a
23 State-wide coalition of community groups, school districts, and education organizations. Its
24 stated mission is to support better education in Washington's public schools. It is a non-profit
25 corporation organized under the laws of the State of Washington. At the time of trial, its
26 members included the members identified below.

1 18. Washington State PTA. The Washington State Parent Teacher Association is a
2 State-wide association with over 150,000 members in over 900 local PTA units throughout
3 Washington. The vast majority of its members are parents of children in the State's public
4 schools. The Washington State PTA's stated mission is to be a powerful voice for all children, a
5 relevant resource for families and communities, and a strong advocate for the education and
6 well-being of every child. It has a history in this State of speaking on behalf of children and
7 youth in the schools, in the community, and before government bodies and other organizations
8 that make decisions affecting children; supporting parents in developing the skills to raise,
9 protect, and advocate for their children; and encouraging parent and community involvement in
10 education.

11 19. Washington State League of Women Voters. The League of Women Voters of
12 Washington is a State-wide, non-partisan organization with local chapters in 23 locations across
13 Washington – i.e., the Bellingham-Whatcom Counties chapter, Benton-Franklin Counties
14 chapter, Clallam County chapter, Clark County chapter, Cowlitz County chapter, Grays Harbor
15 County chapter, Jefferson County chapter, King County South chapter, Kitsap County chapter,
16 Kittitas County chapter, Mason County chapter, Methow Valley chapter, Pullman chapter, San
17 Juan County chapter, Seattle chapter, Skagit County chapter, Snohomish County chapter, South
18 Whidbey Island chapter, Spokane Area chapter, Tacoma-Pierce chapter, Thurston County
19 chapter, Whidbey Island chapter, and Yakima County chapter. The Washington League of
20 Women Voters' stated mission is to encourage the informed and active participation of citizens
21 in government and to influence public policy through education and advocacy. It has a
22 longstanding interest in education dating back to the 1930s, when the organization worked for
23 the then-Superintendent of Public Instruction. Since that time, the Washington League of
24 Women Voters has published several studies on Washington's public school system and joined
25 State-wide coalitions to enhance its school funding lobbying efforts.

1 20. El Centro de la Raza. El Centro de la Raza is a non-profit organization based in
2 the old Beacon Hill School in King County. It runs a variety of education-related programs and
3 services for children and families in low income, Latino American, and other historically
4 disadvantaged segments of our State's population. These programs include before- and after-
5 school assistance, summer school classes, and an early childhood educational center. El Centro
6 de la Raza's stated mission is to build unity across all racial and economic sectors; to organize,
7 empower, and defend our most vulnerable and marginalized populations; and to bring justice,
8 dignity, equality, and freedom to all the peoples of the world. It has a history in this State of
9 providing mentoring and tutoring services to Washington's public school children and offering
10 an educational environment that enhances the physical, emotional, social, and intellectual
11 potential of children.

12 21. Urban League. The Urban League of Metropolitan Seattle is a non-profit
13 organization in the larger urban areas of King County. It runs a variety of education-related
14 programs and services for children and families in low income, African American, and other
15 historically disadvantaged segments of our State's population. The Urban League of
16 Metropolitan Seattle was established in 1929 and incorporated in 1936 as one of the 115
17 affiliates of the National Urban League. The Urban League of Metropolitan Seattle's stated
18 mission is to empower, enable, and assist African Americans, other people of color, and
19 disadvantaged individuals in becoming self sufficient through public advocacy, providing
20 services, and developing strong business and community partnerships. It has a history in this
21 State of providing the community with imperative cultural and educational resources, including
22 tutoring, programs for academic enrichment, and scholarships.

23 22. Equitable Opportunity Caucus (EOC). The Equitable Opportunity Caucus is a
24 coalition of Washington State student and family advocates, tribal leaders, leaders of diverse
25 cultural communities, advocates for students with disabilities, and educators who advocate for
26 the educational interests of all children. The Equitable Opportunity Caucus has a history in this

1 State of working toward the improvement of education for all children in Washington's public
2 schools.

3 23. Minority Executive Directors Coalition (MEDC). The Minority Executive
4 Directors Coalition is a non-profit organization comprised of over 80 Executive Directors and
5 Program Directors who are persons of color working in private sector, non-profit human service,
6 and community development agencies in the King County area. It was founded in 1981 to unite
7 the Asian Pacific American, African American, Native American, and Chicano Latino
8 communities in advocacy for people of color. It is the region's longest standing and broadest
9 based multi-ethnic coalition of its kind. It has a history in this region of working with legislators,
10 government officials, and school districts to shape public policies affecting people of color.

11 24. Washington State Special Education Coalition (WSSEC). The Washington State
12 Special Education Coalition is a State-wide, non-profit organization with over 30 member
13 organizations, as well as several individual members throughout the State of Washington – the
14 majority of whom have family members who are children with special education needs in the
15 State's public schools. The Washington State Special Education Coalition was formed in 1977.
16 Its stated mission is to bring together parent and professional organizations who are interested in
17 the special needs and concerns of students in need of special education and support services. It
18 has a history in this State of advocating for quality education for all children, particularly those
19 receiving special education services in our State.

20 25. Disability Rights Washington (DRW). Disability Rights Washington, formerly
21 known as the Washington Protection and Advocacy System, Inc., is a State-wide, non-profit
22 organization in the State of Washington. The majority of its members are individuals with
23 disabilities and/or have family members with disabilities. Disability Rights Washington's stated
24 mission is to advance the dignity, equity, and self-determination of people with disabilities and to
25 pursue justice on matters related to human and legal rights. It has a history in this State of
26

1 placing a priority on ensuring that students with disabilities receive free appropriate public
2 education.

3 26. American Association of University Women of Washington (AAUW). The
4 American Association of University Women of Washington is a State-wide, non-profit
5 organization with over 1,800 members. It was established in 1881 and consists of 37 local
6 branches: Anacortes, Bellingham, Clallum, Colville, Cowlitz County, Dayton, Edmonds,
7 Everett, Federal Way, Gig Harbor, Highline, Hudson's Bay, Issaquah, Kirkland-Redmond, Lake
8 Washington (Bellevue), Lewis County, Mount Vernon, Okanogan-Omak, Olympia, Palouse-
9 Garfield, Port Townsend, Puyallup Valley, Ritzville, Seattle, Southeast King County, Spokane,
10 Stanwood-Camano Island, Tacoma, Tri-Cities, Twin Harbors, Vancouver, Walla Walla,
11 Wenatchee, Whidbey Island, Willapacific, Yakima, and an Online branch. The American
12 Association of University Women of Washington's stated mission is to advance equity for
13 women and girls through advocacy, education, and research. It believes that "Education is the
14 key to women's economic security." It has a history in this State of advocating for responsible,
15 ample, and stable State funding for all levels of education.

16 27. Lutheran Public Policy Office of Washington State. The Lutheran Public Policy
17 Office of Washington State is one of the 20 State Public Policy Offices of the Evangelical
18 Lutheran Church in America. The Lutheran Public Policy Office of Washington State was
19 formed in 1984. Its stated mission is to advocate justice for all of creation, particularly those
20 who are impoverished and marginalized. It has a history in this State of advocating for a quality
21 education system for Washington's children.

22 28. The Seattle Breakfast Group. The Seattle "Breakfast Group" is a Seattle
23 non-profit organization dedicated to leadership and community service. It is an organization of
24 African American business and professional men that have been active in the Seattle community
25 for more than 30 years. One of the primary focuses of the organization is to provide support for
26 youth in achieving their educational objectives. The Breakfast Group's stated mission is to bring

1 together African American men of true value for community service and to provide economic
2 empowerment through leadership. It has a history in this State of working with high-risk young
3 men to help them complete school and access higher education.

4 29. Vietnamese Friendship Association. The Vietnamese Friendship Association was
5 originally established in 1978 to help Vietnamese refugees and immigrants adjust to life in the
6 United States after the Vietnam War. Since that time, it has shifted its focus to promoting
7 academic success, leadership development, parental involvement, cultural enrichment, and
8 community building among underprivileged families with school-age children. The Vietnamese
9 Friendship Association's stated mission is to empower the Vietnamese community to succeed
10 while bridging, preserving, and promoting cultural heritage. It has a history in this State of
11 providing mentoring, parent advocacy services, tutoring, and summer and after-school programs
12 for Washington's public school children.

13 30. Arlington School District. Arlington School District No. 16 is one of the State's
14 school districts in Snohomish County, with a student population of approximately 5,600
15 students.

16 31. Auburn School District. Auburn School District No. 408 is one of the State's
17 school districts in King County, with a student population of approximately 14,900 students.

18 32. Bainbridge Island School District. Bainbridge Island School District No. 303 is
19 one of the State's school districts in Kitsap County, with a student population of approximately
20 4,000 students.

21 33. Bellevue School District. Bellevue School District No. 405 is one of the State's
22 school districts in King County, with a student population of approximately 17,200 students.

23 34. Bellingham School District. Bellingham School District No. 501 is one of the
24 State's school districts in Whatcom County, with a student population of approximately 10,700
25 students.

1 35. Chimacum School District. Chimacum School District No. 49 is one of the
2 State's school districts in Jefferson County, with a student population of approximately 1,100
3 students.

4 36. Clover Park School District. Clover Park School District No. 400 is one of the
5 State's school districts in Pierce County, with a student population of approximately 12,200
6 students.

7 37. Edmonds School District. Edmonds School District No. 15 is one of the State's
8 school districts in Snohomish County, with a student population of approximately 20,700
9 students.

10 38. Federal Way School District. Federal Way School District No. 210 is one of the
11 State's school districts in King County, with a student population of approximately 22,400
12 students.

13 39. Highline School District. Highline School District No. 401 is one of the State's
14 school districts in King County, with a student population of approximately 17,500 students.

15 40. Kelso School District. Kelso School District No. 458 is one of the State's school
16 districts in Cowlitz County, with a student population of approximately 5,200 students.

17 41. Kent School District. Kent School District No. 415 is one of the State's school
18 districts in King County, with a student population of approximately 27,400 students.

19 42. Lakewood School District. Lakewood School District No. 306 is one of the
20 State's school districts in Snohomish County, with a student population of approximately 2,600
21 students.

22 43. Marysville School District. Marysville School District No. 25 is one of the
23 State's school districts in Snohomish County, with a student population of approximately 11,900
24 students.

1 44. North Kitsap School District. North Kitsap School District No. 400 is one of the
2 State's school districts in Kitsap County, with a student population of approximately 6,800
3 students.

4 45. Northshore School District. Northshore School District No. 417 is one of the
5 State's school districts in King County, with a student population of approximately 19,800
6 students.

7 46. Olympia School District. Olympia School District No. 111 is one of the State's
8 school districts in Thurston County, with a student population of approximately 9,400 students.

9 47. Omak School District. Omak School District No. 19 is one of the State's school
10 districts in Okanogan County, with a student population of approximately 1,800 students.

11 48. Orcas Island School District. Orcas Island School District No. 137 is one of the
12 State's school districts in San Juan County, with a student population of approximately 500
13 students.

14 49. Pasco School District. Pasco School District No. 1 is one of the State's school
15 districts in Franklin County, with a student population of approximately 13,900 students.

16 50. Peninsula School District. Peninsula School District No. 401 is one of the State's
17 school districts in Pierce County, with a student population of approximately 9,400 students.

18 51. Puyallup School District. Puyallup School District No. 3 is one of the State's
19 school districts in Pierce County, with a student population of approximately 21,700 students.

20 52. San Juan Island School District. San Juan Island School District No. 149 is one
21 of the State's school districts in San Juan County, with a student population of approximately
22 900 students.

23 53. Seattle School District. Seattle School District No. 1 is one of the State's school
24 districts in King County, with a student population of approximately 46,000 students.

25 54. Shoreline School District. Shoreline School District No. 412 is one of the State's
26 school districts in King County, with a student population of approximately 9,200 students.

1 55. Snohomish School District. Snohomish School District No. 201 is one of the
2 State's school districts in Snohomish County, with a student population of approximately 9,800
3 students.

4 56. South Kitsap School District. South Kitsap School District No. 402 is one of the
5 State's school districts in Kitsap County, with a student population of approximately 10,300
6 students.

7 57. Spokane School District. Spokane School District No. 81 is one of the State's
8 school districts in Spokane County, with a student population of approximately 29,700 students.

9 58. Tahoma School District. Tahoma School District No. 409 is one of the State's
10 school districts in King County, with a student population of approximately 7,400 students.

11 59. Vancouver School District. Vancouver School District No. 37 is one of the
12 State's school districts in Clark County, with a student population of approximately 22,600
13 students.

14 60. Yakima School District. Yakima School District No. 7 is one of the State's
15 school districts in Yakima County, with a student population of approximately 14,600 students.

16 61. Washington Education Association. The Washington Education Association is a
17 State-wide organization of approximately 78,000 teachers and educators working in the State's
18 public schools. Approximately 63,000 of its active members are certificated teachers in the
19 State's K-12 public schools. Approximately 12,000 more are educational support professionals
20 in the State's K-12 public schools. The Washington Education Association's stated mission
21 statement includes making public education "the best it can be for students, staff, and
22 communities." It has a history in this State of improving the quality of and access to public
23 education for all students.

24 62. Arlington Education Association. The Arlington Education Association is the
25 labor organization that represents approximately 301 non-supervisory education employees in
26 the Arlington School District.

1 63. Auburn Education Association. The Auburn Education Association is the labor
2 organization that represents approximately 861 non-supervisory education employees in the
3 Auburn School District.

4 64. Bainbridge Island Education Association. The Bainbridge Island Education
5 Association is the labor organization that represents approximately 260 non-supervisory
6 education employees in the Bainbridge Island School District.

7 65. Bellevue Education Association. The Bellevue Education Association is the labor
8 organization that represents approximately 1,150 non-supervisory education employees in the
9 Bellevue School District.

10 66. Bellingham Education Association. The Bellingham Education Association is the
11 labor organization that represents approximately 767 non-supervisory education employees in
12 the Bellingham School District.

13 67. Chimacum Independent Association. The Chimacum Independent Association is
14 the labor organization that represents approximately 39 non-supervisory education employees in
15 the Chimacum School District.

16 68. Chimacum Education Association. The Chimacum Education Association is the
17 labor organization that represents approximately 66 non-supervisory education employees in the
18 Chimacum School District.

19 69. Clover Park Education Association. The Clover Park Education Association is
20 the labor organization that represents approximately 794 non-supervisory education employees
21 in the Clover Park School District.

22 70. Edmonds Education Association. The Edmonds Education Association is the
23 labor organization that represents approximately 1,351 non-supervisory education employees in
24 the Edmonds School District.

1 71. Federal Way Education Association. The Federal Way Education Association is
2 the labor organization that represents approximately 1,397 non-supervisory education employees
3 in the Federal Way School District.

4 72. Highline Education Association. The Highline Education Association is the labor
5 organization that represents approximately 1,320 non-supervisory education employees in the
6 Highline School District.

7 73. Kelso Education Association. The Kelso Education Association is the labor
8 organization that represents approximately 330 non-supervisory education employees in the
9 Kelso School District.

10 74. Kent Education Association. The Kent Education Association is the labor
11 organization that represents approximately 1,812 non-supervisory education employees in the
12 Kent School District.

13 75. Lakewood Education Association. The Lakewood Education Association is the
14 labor organization that represents approximately 148 non-supervisory education employees in
15 the Lakewood School District.

16 76. Marysville Education Association. The Marysville Education Association is the
17 labor organization that represents approximately 685 non-supervisory education employees in
18 the Marysville School District.

19 77. North Kitsap Education Association. The North Kitsap Education Association is
20 the labor organization that represents approximately 405 non-supervisory education employees
21 in the North Kitsap School District.

22 78. Northshore Education Association. The Northshore Education Association is the
23 labor organization that represents approximately 1,201 non-supervisory education employees in
24 the Northshore School District.

1 79. Olympia Education Association. The Olympia Education Association is the labor
2 organization that represents approximately 564 non-supervisory education employees in the
3 Olympia School District.

4 80. Omak Education Association. The Omak Education Association is the labor
5 organization that represents approximately 103 non-supervisory education employees in the
6 Omak School District.

7 81. Orcas Island Education Association. The Orcas Island Education Association is
8 the labor organization that represents approximately 39 non-supervisory education employees in
9 the Orcas Island School District.

10 82. Pasco Association of Educators. The Pasco Association of Educators is the labor
11 organization that represents approximately 781 non-supervisory education employees in the
12 Pasco School District.

13 83. Peninsula Education Association. The Peninsula Education Association is the
14 labor organization that represents approximately 583 non-supervisory education employees in
15 the Peninsula School District.

16 84. Puyallup Education Association. The Puyallup Education Association is the labor
17 organization that represents approximately 1,246 non-supervisory education employees in the
18 Puyallup School District.

19 85. San Juan Island Education Association. The San Juan Island Education
20 Association is the labor organization that represents approximately 61 non-supervisory education
21 employees in the San Juan Island School District.

22 86. Seattle Education Association. The Seattle Education Association is the labor
23 organization that represents approximately 4,532 non-supervisory education employees in the
24 Seattle School District.

1 87. Shoreline Education Association. The Shoreline Education Association is the
2 labor organization that represents approximately 593 non-supervisory education employees in
3 the Shoreline School District.

4 88. Snohomish Education Association. The Snohomish Education Association is the
5 labor organization that represents approximately 547 non-supervisory education employees in
6 the Snohomish School District.

7 89. South Kitsap Education Association. The South Kitsap Education Association is
8 the labor organization that represents approximately 623 non-supervisory education employees
9 in the South Kitsap School District.

10 90. Spokane Education Association. The Spokane Education Association is the labor
11 organization that represents approximately 2,923 non-supervisory education employees in the
12 Spokane School District.

13 91. Tahoma Education Association. The Tahoma Education Association is the labor
14 organization that represents approximately 409 non-supervisory education employees in the
15 Tahoma School District.

16 92. Vancouver Education Association. The Vancouver Education Association is the
17 labor organization that represents approximately 1,366 non-supervisory education employees in
18 the Vancouver School District.

19 93. Yakima Education Association. The Yakima Education Association is the labor
20 organization that represents approximately 901 non-supervisory education employees in the
21 Yakima School District.

22 94. The Respondent. The Respondent is the State of Washington. Pursuant to
23 Article IX, §1 of our State Constitution, the Respondent State provides each of the State's public
24 school districts with funds for education.

1 **(b) Conclusions of Law Concerning the Parties, Jurisdiction, Venue, & Burdens of Proof**

2 95. Venue for this action properly lies in this Washington State Superior Court for
3 King County.

4 96. This Washington State Superior Court has jurisdiction over this action, and the
5 Petitioners have satisfied all conditions precedent to bringing this action.

6 97. To prove the existence of a fact, the party alleging that fact must show that that
7 fact is more likely than not true. In other words, that fact must be proven by a preponderance of
8 the evidence at trial. Accord, *Seattle School District v. State*, 90 Wn.2d 476, 528 (1978) (when
9 court is “concerned with legislative compliance with a specific constitutional mandate ... the
10 normal civil burden of proof, *i.e.*, preponderance of the evidence, applies”). Petitioners’
11 fundamental contention is that the Respondent State has failed to take the action required to fully
12 comply with a specific constitutional mandate – namely, the State’s paramount constitutional
13 duty under Article IX, §1. The “preponderance of the evidence” standard accordingly applies in
14 this case. E.g., *Seattle School District v. State*, 90 Wn.2d at 528.

15 This contrasts with the situation where the constitutionality of a statute is challenged, and
16 the burden is on the party challenging that statute to prove its unconstitutionality beyond a
17 “reasonable doubt”. E.g., *Island County v. State*, 135 Wn.2d 141, 146 (1998). The Washington
18 Supreme Court has explained, however, that even when a specific statutory provision is being
19 challenged, the “reasonable doubt” standard is not the same as the one applied in a criminal case:
20 “The ‘reasonable doubt’ standard, when used in the context of a criminal proceeding as the
21 standard necessary to convict an accused of a crime, is an evidentiary standard and refers to ‘the
22 necessity of reaching a subjective state of certitude of the facts in issue.’ In contrast, the ‘beyond
23 a reasonable doubt’ standard used when a statute is challenged as unconstitutional refers to the
24 fact that one challenging a statute must, by argument and research, convince the court that there
25 is no reasonable doubt that the statute violates the constitution.” *Island County v. State*, 135
26 Wn.2d at 147.

1 Here, since Petitioners' fundamental contention is not that a specific statutory provision
2 is unconstitutional, but rather that the State has failed to comply with the specific constitutional
3 mandate of Article IX, §1, the "preponderance of the evidence" standard applies. See *Seattle*
4 *School District v. State*, 90 Wn.2d at 528.

5 98. This Court has determined that each finding of fact and each conclusion of law set
6 forth in these Findings & Conclusions satisfy the standards of proof under Washington law.

7
8 **B. GENERAL BACKGROUND:**
9 **the Importance of Education in our State's Democracy**

10 **(a) Findings of Fact Concerning the Importance of Education in our State's Democracy**

11 99. The Respondent State has straightforwardly admitted in this suit that "A healthy
12 democracy depends on educated citizens." Original Petition at ¶20 ("20. A healthy democracy
13 depends on educated citizens.") and original Answer at ¶11 ("11. Respondent admits the
14 allegation in paragraph 20."). The evidence at trial and statutory framework of this State, some
15 of which is outlined below, confirmed the factually accuracy of that statement, especially in the
16 type of broad, populist democracy established in this State by Washington law.

17 87. The citizens of this State publicly elect a broad array of, and large number of, the
18 public officials who run the State and local governments in Washington. For example, the
19 citizens of this State:

- 20 • elect their Governor, Lieutenant Governor, Attorney General, Secretary of State,
21 Treasurer, Auditor, Commissioner of Public Lands, Insurance Commissioner, and
22 Superintendent of Public Instruction in State-wide elections.¹
- 23 • elect their 49 State Senators and 98 State Representatives in Legislative District
24 elections.²
- 25 • elect the Auditors,³ Clerks, Commissioners, Sheriffs, and Treasurers in each of
26 their 39 Counties.

¹ Wash. Const. art. III §1 (Governor, Lieutenant Governor, Secretary of State, Treasurer, Auditor, Attorney General, Superintendant of Public Instruction, and Commissioner of Public Lands); RCW 48.02.010 (Insurance Commissioner).

² Wash. Const. art. II §§ 4, 6; RCW 44.05.090(4).

- elect the Mayors, Commissioners, and members of the City Councils of this State's over 280 cities and towns.⁴
- elect the 9 justices of this State's Supreme Court.⁵
- elect the 24 judges of this State's Courts of Appeal.⁶
- elect the 181 judges of this State's Superior Courts.⁷
- elect the 110 judges of this State's District Courts.⁸
- elect the 109 judges of this State's Municipal Courts.⁹
- elect the members of the Boards of Commissioners of each of this State's 373 Fire Protection Districts.¹⁰
- elect the members of the School Boards of each of this State's 295 School Districts.¹¹
- elect the members of the Boards of Commissioners of each of this State's 56 Public Hospital Districts.¹²
- elect the members of the Boards of Commissioners of each of this State's 185 Water-Sewer Districts.¹³

³ RCW 36.16.030; Bureau of the Census, U.S. Dep't of Commerce, 2007 Census of Governments: Individual State Description, Washington, available at <http://ftp2.census.gov/govs/cog/2007/wa.pdf>.

⁴ RCW 35.17.020, 35.18.010, 35.22.200, 35.23.021, 35.27.070; Bureau of the Census, U.S. Dep't of Commerce, 2007 Census of Governments: Individual State Description, Washington, available at <http://ftp2.census.gov/govs/cog/2007/wa.pdf>.

⁵ Wash. Const. art. IV §3; RCW 2.04.070-.071.

⁶ Wash. Const. art. IV §30; RCW 2.06.020.

⁷ Wash. Const. art. IV §5; RCW 2.08.060; see 2008 *Washington State Yearbook* 16-32 (Scott D. Dwyer & Mary B. Dwyer eds., 26th ed. 2008).

⁸ RCW 3.34.050; see 2008 *Washington State Yearbook* 16-32 (Scott D. Dwyer & Mary B. Dwyer eds., 26th ed. 2008).

⁹ RCW 3.50.050; see 2008 *Washington State Yearbook* 16-32 (Scott D. Dwyer & Mary B. Dwyer eds., 26th ed. 2008).

¹⁰ RCW 52.14.060; Municipal Research & Servs. Ctr. of Wash., Washington Special Purpose Districts 4 (2009), <http://www.mrsc.org/Subjects/Governance/spd/SPDChart0109.pdf>; see 2008 *Washington State Yearbook* 232-39 (Scott D. Dwyer & Mary B. Dwyer eds., 26th ed. 2008).

¹¹ RCW 28A.343.300; Municipal Research & Servs. Ctr. of Wash., Washington Special Purpose Districts 11 (2009), <http://www.mrsc.org/Subjects/Governance/spd/SPDChart0109.pdf>; Bureau of the Census, U.S. Dep't of Commerce, 2007 Census of Governments: Individual State Description, Washington, available at <http://ftp2.census.gov/govs/cog/2007/wa.pdf>.

¹² RCW 70.44.040; Municipal Research & Servs. Ctr. of Wash., Washington Special Purpose Districts 10 (2009), <http://www.mrsc.org/Subjects/Governance/spd/SPDChart0109.pdf>; see 2008 *Washington State Yearbook* 240 (Scott D. Dwyer & Mary B. Dwyer eds., 26th ed. 2008).

- elect the members of the Boards of Commissioners of each of this State's 27 Public Utilities Districts.¹⁴
- elect the members of the Boards of Commissioners of each of this State's 42 Park and Recreation Districts.¹⁵
- elect the members of the Boards of Commissioners of each of this State's 75 Port Districts.¹⁶
- elect the members of the Boards of Directors of each of this State's 98 Irrigation Districts.¹⁷
- elect the members of the Boards of Commissioners of each of this State's 103 Cemetery Districts.¹⁸
- elect the members of the Boards of Commissioners of each of this State's 107 Diking and Drainage Districts.¹⁹
- elect the majority of the members of the Boards of Commissioners of each of this State's 47 Conservation Districts.²⁰
- elect the members of the Boards of Directors of each of this State's 10 Flood Control Districts.²¹

¹³ RCW 57.12.030; Municipal Research & Servs. Ctr. of Wash., Washington Special Purpose Districts 13 (2009), <http://www.mrsc.org/Subjects/Governance/spd/SPDChart0109.pdf>; see 2008 Washington State Yearbook 253-56 (Scott D. Dwyer & Mary B. Dwyer eds., 26th ed. 2008).

¹⁴ RCW 54.12.010; Municipal Research & Servs. Ctr. of Wash., Washington Special Purpose Districts 10 (2009), <http://www.mrsc.org/Subjects/Governance/spd/SPDChart0109.pdf>; see 2008 Washington State Yearbook 252 (Scott D. Dwyer & Mary B. Dwyer eds., 26th ed. 2008).

¹⁵ RCW 36.69.090; Municipal Research & Servs. Ctr. of Wash., Washington Special Purpose Districts 8 (2009), <http://www.mrsc.org/Subjects/Governance/spd/SPDChart0109.pdf>; see 2008 Washington State Yearbook 249-50 (Scott D. Dwyer & Mary B. Dwyer eds., 26th ed. 2008).

¹⁶ RCW 53.12.172; Municipal Research & Servs. Ctr. of Wash., Washington Special Purpose Districts 9 (2009), <http://www.mrsc.org/Subjects/Governance/spd/SPDChart0109.pdf>; see 2008 Washington State Yearbook 250-52 (Scott D. Dwyer & Mary B. Dwyer eds., 26th ed. 2008).

¹⁷ RCW 87.03.080; Municipal Research & Servs. Ctr. of Wash., Washington Special Purpose Districts 7 (2009), <http://www.mrsc.org/Subjects/Governance/spd/SPDChart0109.pdf>; see 2008 Washington State Yearbook 241-42 (Scott D. Dwyer & Mary B. Dwyer eds., 26th ed. 2008).

¹⁸ RCW 68.52.220; Municipal Research & Servs. Ctr. of Wash., Washington Special Purpose Districts 1 (2009), <http://www.mrsc.org/Subjects/Governance/spd/SPDChart0109.pdf>; see 2008 Washington State Yearbook 227-28 (Scott D. Dwyer & Mary B. Dwyer eds., 26th ed. 2008).

¹⁹ RCW 85.38.070; Municipal Research & Servs. Ctr. of Wash., Washington Special Purpose Districts 2 (2009), <http://www.mrsc.org/Subjects/Governance/spd/SPDChart0109.pdf>; see 2008 Washington State Yearbook 230-32 (Scott D. Dwyer & Mary B. Dwyer eds., 26th ed. 2008).

²⁰ RCW 89.08.030; Municipal Research & Servs. Ctr. of Wash., Washington Special Purpose Districts 1 (2009), <http://www.mrsc.org/Subjects/Governance/spd/SPDChart0109.pdf>; see 2008 Washington State Yearbook 229-30 (Scott D. Dwyer & Mary B. Dwyer eds., 26th ed. 2008).

²¹ RCW 85.38.070, 86.09.259; Municipal Research & Servs. Ctr. of Wash., Washington Special Purpose Districts 5 (2009),

- elect the members of the Boards of Directors of each of this State's 11 Weed Districts.²²

88. In short, Washington citizens democratically elect more of their State and local government officials than do the citizens in most other States in our Nation.²³

89. The citizens of this State routinely exercise their right to amend the Washington State Constitution pursuant Article XXIII. For example, in the past 30 years the citizens of this State have considered and voted upon 49 proposed Amendments to their State Constitution, **adopting** 31 Amendments to their State Constitution and **rejecting** 18 other proposed Amendments.²⁴

90. Washington is also one of the two States in our country where voters have the right and power to initiate legislation both directly (to the People) and indirectly (to the legislature).²⁵

91. The citizens of this State established for themselves the right and power to propose and enact State-wide legislation by way of Initiative in a 1912 Amendment to their State Constitution, which is now Article II, §1(a). Washington citizens routinely exercise this right of direct democracy. The citizens of this State have:

- **filed** and circulated for signature over 1,030 Initiative petitions proposing new State-wide legislation to be submitted to the citizens of Washington for a State-wide vote.²⁶

<http://www.mrsc.org/Subjects/Governance/spd/SPDChart0109.pdf>; see 2008 *Washington State Yearbook* 239 (Scott D. Dwyer & Mary B. Dwyer eds., 26th ed. 2008).

²² RCW 17.04.070; Municipal Research & Servs. Ctr. of Wash., Washington Special Purpose Districts 14 (2009), <http://www.mrsc.org/Subjects/Governance/spd/SPDChart0109.pdf>; see 2008 *Washington State Yearbook* 249 (Scott D. Dwyer & Mary B. Dwyer eds., 26th ed. 2008).

²³ Bureau of the Census, U.S. Dep't of Commerce, 1992 Census of Governments Vol. 1, No. 2, Popularly Elected Officials tbl. 2 and tbl. 17 (1995), available at http://www.census.gov/prod/2/gov/gc.gc92_1_2.pdf.

²⁴ See Wash. Sec'y of State, Elections & Voting, Previous Elections, http://www.secstate.wa.gov/elections/previous_elections.aspx.

²⁵ Initiative & Referendum Inst., *The Initiative & Referendum Process in America – A Primer* 9 & app. A, tbl. 1.1 (M. Dane Waters ed. 1992).

²⁶ See Wash. Sec'y of State, Elections & Voting, Index to Initiative & Referendum Statistics: 1914-2008, <http://www.secstate.wa.gov/elections/initiatives/statistics.aspx>.

- **filed** and circulated for signature over 430 Initiative petitions proposing new State-wide legislation to be voted upon by the legislature.²⁷
- **certified** to the State-wide ballot over 130 Initiative Measures by securing the required number of signatures (currently 241,153) to submit State-wide legislation to the citizens of Washington for a State-wide Initiative vote.²⁸
- **certified** to the legislature an additional 30 Initiative Measures by securing the required number of signatures (currently 241,153) to submit State-wide legislation to an Initiative vote in the legislature.²⁹
- **enacted** in State-wide elections 80 Initiative Measures as the law of this State.³⁰

92. In fact, Washington citizens directly enact more State laws at the ballot box than do the citizens in all but five other States in our Nation.³¹

93. Washington citizens' exercise of their Constitutional Initiative power has increased in the time period after the Washington Supreme Court's *Seattle School District* ruling. Washington citizens voted on 46 State-wide Initiative Measures in the 30 years before that 1978 ruling, and voted on 71 in the 30 years after.³²

94. The citizens of this State have also established for themselves the right and power to put a hold on laws adopted by the State legislature until those laws are subjected to (and approved by) a Referendum vote of the People (Article II, §1(b)). Washington citizens routinely exercise this right of direct democracy. The citizens of this State have:

- **filed** and circulated for signature over 70 Referendum petitions to submit laws adopted by the State legislature to Washington's citizens for a State-wide vote.³³

²⁷ See Wash. Sec'y of State, Elections & Voting, Index to Initiative & Referendum Statistics: 1914-2008, <http://www.secstate.wa.gov/elections/initiatives/statistics.aspx>.

²⁸ See Wash. Sec'y of State, Elections & Voting, Index to Initiative & Referendum Statistics: 1914-2008, <http://www.secstate.wa.gov/elections/initiatives/statistics.aspx>.

²⁹ See Wash. Sec'y of State, Elections & Voting, Index to Initiative & Referendum Statistics: 1914-2008, <http://www.secstate.wa.gov/elections/initiatives/statistics.aspx>.

³⁰ See Wash. Sec'y of State, Elections & Voting, Index to Initiative & Referendum Statistics: 1914-2008, <http://www.secstate.wa.gov/elections/initiatives/statistics.aspx>.

³¹ Initiative & Referendum Inst., Overview of Initiative Use, 1904-2007 1 (2008), available at <http://www.iandrinstute.org/IRI%20Initiative%20Use.pdf>.

³² See Wash. Sec'y of State, Elections & Voting, Index to Initiative & Referendum Statistics: 1914-2008, <http://www.secstate.wa.gov/elections/initiatives/statistics.aspx>.

³³ See Wash. Sec'y of State, Elections & Voting, Index to Initiative & Referendum Statistics: 1914-2008, <http://www.secstate.wa.gov/elections/initiatives/statistics.aspx>.

- **put on hold** 35 laws adopted by the State legislature until they could be examined and voted upon by Washington's citizens in a State-wide vote by securing the required number of signatures (currently 120,577) to submit State-wide legislation to the citizens of Washington for a State-wide Referendum vote.³⁴
- **rejected** 30 laws³⁵ adopted by the State legislature through a State-wide Referendum vote.
- **enacted** 5 laws as the law of this State through a State-wide Referendum vote.³⁶

95. In addition to the above, Washington citizens have also considered and voted upon 49 additional bills submitted by the legislature for a State-wide Referendum vote of the People.³⁷ Of those 49 Referendum bills, Washington's citizens considered and **rejected** 11 of those bills adopted by the State legislature, and **enacted** 38 of those bills as the law of this State.³⁸

96. The citizens in this State's democracy also routinely exercise their right to directly enact (or reject) local legislation at the ballot box pursuant to Washington State statutes (e.g., RCW 35.22.200), local government charters (e.g., King County Charter §230), and local ordinances (e.g., City of Woodinville, Ordinance 119). For example, local voters in this State routinely exercise their right of direct democracy to enact or reject local government ballot measures relating to property taxes, sales taxes, public health, and other governmental issues, which includes (but has not been limited to):

- considering and voting upon local tax levies for school districts, public hospital districts, fire protection districts, water-sewer districts, public facilities districts, park and recreation districts, road districts, ferry districts, airport districts, county rail districts, cities and towns, etc.³⁹

³⁴ See Wash. Sec'y of State, Elections & Voting, Index to Initiative & Referendum Statistics: 1914-2008, <http://www.secstate.wa.gov/elections/initiatives/statistics.aspx>.

³⁵ See Wash. Sec'y of State, Elections & Voting, Index to Initiative & Referendum Statistics: 1914-2008, <http://www.secstate.wa.gov/elections/initiatives/statistics.aspx>.

³⁶ See Wash. Sec'y of State, Elections & Voting, Index to Initiative & Referendum Statistics: 1914-2008, <http://www.secstate.wa.gov/elections/initiatives/statistics.aspx>.

³⁷ See Wash. Sec'y of State, Elections & Voting, Index to Initiative & Referendum Statistics: 1914-2008, <http://www.secstate.wa.gov/elections/initiatives/statistics.aspx>.

³⁸ See Wash. Sec'y of State, Elections & Voting, Index to Initiative & Referendum Statistics: 1914-2008, <http://www.secstate.wa.gov/elections/initiatives/statistics.aspx>.

³⁹ <http://www.mrsc.org/subjects/governance/spd/SPD-Revenues.aspx>.

- considering and voting upon the creation of public hospital districts, fire protection districts, port districts, conservation districts, flood control districts, water-sewer districts, park and recreation districts, etc.⁴⁰
- considering and voting upon local ballot measures relating to City-wide school bussing bans, County government restructuring, City-wide gambling bans, City-wide plastic bag fees, City enforcement of marijuana laws, City mass transit projects, etc.⁴¹

97. To help citizens inform themselves about the various candidates and ballot measures they will be voting upon in the State elections noted above, the Washington's Constitution and State statutes require the Washington Secretary of State to publish and mail to every household in this State a Voters' Pamphlet. Wash. Const., Art. II, §1(e); RCW 29A.32.010; RCW 29A.32.031. That Voters' Pamphlet provides information concerning the measures and candidates on the ballot, such as the full text of each Initiative, Referendum, or Constitutional Amendment being submitted for a vote, a fiscal impact statement explaining various fiscal impacts of such ballot measures, "for" and "against" statements by proponents and opponents of each ballot measure, and candidacy statements by each person running for State office. Washington law provides for similar local Voters' Pamphlets relating to local elections as well. RCW 29A.32.210.

98. For a citizen of this State to meaningfully participate in this State's democratic process and intelligently cast his or her vote on the broad array of State and local government offices and ballot measures noted above, that citizen must be meaningfully equipped to learn about, understand, and evaluate the candidates, ballot measures, positions, and issues being debated and decided in that election. Having an educated citizenry is accordingly critical to this State's democracy.

⁴⁰ <http://www.mrsc.org/Subjects/Governance/spd/SPD-Formation.aspx>.

⁴¹ E.g., City of Seattle Initiative No. 34 (school bussing ban); King County Alternative Proposed Charter Amendments 1a and 1b (restructuring the King County Council); City of Lakewood Proposition No. 1 (banning minicasinios); City of Seattle Referendum No. 1 (plastic bag tax); City of Seattle Initiative No. 75 (enforcement and prosecution of certain marijuana offenses); City of Seattle Initiative No. 41 (Seattle Monorail project).

1 99. Having an educated citizenry is also vital to the operation of this State's justice
2 system. For example, the jury system upon which this State's justice system is based depends
3 upon each juror being meaningfully equipped to read, understand, comprehend, and debate the
4 evidence, issues, and arguments presented to the jury for decision.

5 100. Having an educated citizenry also plays a vital role in preserving the cohesiveness
6 of this State's pluralistic society as a whole. For example, broad public education provides each
7 member of this State's citizenry a shared knowledge and understanding of the common history,
8 common values, and common ideals that all citizens in this State share. This unifying awareness
9 and understanding is especially important to maintain the cohesiveness of a widely diverse
10 society like the one in this State, which is an amalgamation of citizens from a wide range of

- 11 • different cultures (e.g., Chinese-American, Mexican-American, Native American,
12 Pacific Islander, Hmong, former Soviet Bloc immigrants, etc.),
- 13 • different backgrounds (e.g., poor, rich, white-collar, blue-collar, suburban, rural,
14 urban, etc.),
- 15 • different lifestyles, preferences, and neighborhoods, and
- 16 • different family roots (new immigrants, first-generation Americans, the Mayflower
17 crowd [or Seattle's equivalent: the Denny crowd], etc.).

18 101. Education also plays a critical civil rights role in promoting equality in our
19 democracy. For example, amply provided, free public education operates as the great equalizer
20 in our democracy, equipping citizens born into the underprivileged segments of our society with
21 the tools they need to compete on a level playing field with citizens born into wealth or privilege.

22 102. Education also plays a critical role in building and maintaining the strong
23 economy necessary to support a stable democracy, one that is free and independent from outside
24 power and influence. For example, broad public education builds the well educated workforce
25 necessary to attract more stable and higher wage jobs to this State's economy, as well as provide
26 the living wage jobs and employment necessary to provide gainful employment to this State's

1 citizens, and lessening the burdens on this State's citizens of social services, crime, and
2 incarceration.

3 103. The recognition of the critical role that education plays in a democracy is not new.
4 As the author of our Declaration of Independence (Thomas Jefferson) succinctly noted: "If a
5 nation expects to be ignorant and free, in a state of civilization, it expects what never was and
6 never will be." Letter to Colonel Charles Yancey, Jan. 6, 1816, in Ford, The Writings, X, p. 1-4.
7 Thomas Jefferson accordingly explained that broad, up-to-date public education is essential to
8 maintain our democratic form of government, noting that there is "no safe depository of the
9 ultimate powers of the society but the people themselves.... [and] if we think them not
10 enlightened enough to exercise their control with a wholesome discretion, the remedy is not to
11 take it from them, but to inform their discretion by education." Letter to William C. Jarvis, Sept.
12 28, 1820, in Ford, ed., The Writings, X, p. 160-61.

13
14 ***(b) Conclusions of Law Concerning the Importance of Education in our Democracy***

15 104. Prior legal rulings have been, and this Court's legal ruling in this matter is,
16 consistent with the above facts concerning the importance of education in our democracy. As the
17 *Brown v. Board of Education of Topeka*, Kansas Court declared:

18 ***Today, education is perhaps the most important function of state***
19 ***and local governments. It is required in the performance of our***
20 ***most basic public responsibilities, even service in the armed forces.***
21 ***It is the very foundation of good citizenship. Today it is a principal***
instrument in awakening the child to cultural values, in preparing
him for later professional training, and in helping him to adjust
normally to his environment.

22 *Brown v. Board of Education of Topeka*, Kansas, 347 U.S. 483, 493, 74 S.Ct. 686, 98 L.Ed. 873
23 (1954) (bold italics added). And as the *Board of Education, Island Trees Union Free School*
24 *District v. Pico* Court has reiterated:

25 [T]he right to receive ideas is a necessary predicate to the *recipient's*
26 meaningful exercise of his own rights of speech, press, and political
freedom. Madison admonished us: '***A popular Government, without***

1 *popular information, or the means of acquiring it, is but a Prologue to a*
2 *Farce or a Tragedy; or, perhaps both. Knowledge will forever govern*
3 *ignorance: And a people who mean to be their own Governors, must arm*
4 *themselves with the power which knowledge gives.'*

5 *Board of Education, Island Trees Union Free School District No. 26 v. Pico*, 457 U.S. 853, 867,
6 102 S.Ct. 2799, 73 L.Ed.2d 435 (1982) (bold italics added); accord, *Plyler v. Doe*, 457 U.S. 202,
7 102 S.Ct. 2382, 72 L.Ed.2d 786 (1982) ("***We have recognized 'the public schools as a most vital***
8 ***civic institution for the preservation of a democratic system of government***") (quoting *Ambach*
9 *v. Norwick*, 441 U.S. 68, 76, 99 S.Ct. 1589, 60 L.Ed.2d 49 (1979)) (bold italics added). In short,
10 the law recognizes that public education plays an essential role in our democracy.

11 105. The law recognizes that education is the key to a citizen's meaningful exercise of
12 his or her First Amendment freedoms. For example, as the *Richmond Newspapers v. Virginia*
13 Court declared:

14 No aspect of [the First Amendment] guarantee is more rightly treasured
15 than its protection of the ability of our people through free and open debate
16 to consider and resolve their own destiny.... '[The] First Amendment is
17 one of the vital bulwarks of our national commitment to intelligent self-
18 government.' ... It embodies our Nation's commitment to popular self-
19 determination and our abiding faith that the surest course for developing
20 sound national policy lies in a free exchange of views on public issues.
21 And ***public debate must not only be unfettered; it must also be informed.***

22 *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 587 n.3, 100 S.Ct. 2814, 65 L.Ed.2d 973
23 (1980)) (quoting *Saxbe v. Washington Post Co.*, 417 U.S. 843, 862-63, 94 S.Ct. 2811, 41
24 L.Ed.2d 514 (Powell, J., dissenting)) (bold italics added).

25 The Washington Supreme Court has accordingly held that the "education"
26 constitutionally required by Article IX, §1 of the Washington Constitution "must prepare
[children] to exercise their First Amendment freedoms both as sources and receivers of
information". *Seattle School District v. State*, 90 Wn.2d 476, 517, 585 P.2d 71 (1978) (underline
added). Accord, *Claremont Sch. Dist. v. Governor*, 142 N.H. 462, 473, 703 A.2d 1353 (1997)
("[E]ven a minimalist view of educational adequacy recognizes the role of education in
preparing citizens to participate in the exercise of voting and first amendment rights. The latter

1 being recognized as fundamental, it is illogical to place the means to exercise those rights on less
2 substantial constitutional footing than the rights themselves.”).

3 106. The law recognizes that broad public education is also critically important to our
4 democracy because it teaches children democratic values and ideals and unites the wide array of
5 cultures present in our democratic society through a sharing of common values and ideals. E.g.,
6 *Ambach v. Norwick*, 441 U.S. 68, 76-77, 99 S.Ct. 1589, 60 L.Ed.2d 49 (1979) (“The importance
7 of public schools in the preparation of individuals for participation as citizens, and in the
8 preservation of the values on which our society rests, long has been recognized by our
9 decisions”, and acknowledging the role that a public education accordingly plays as “an
10 ‘assimilative force’ by which diverse and conflicting elements in our society are brought together
11 on a broad but common ground” and “inculcating fundamental values necessary to the
12 maintenance of a democratic system”); *Brown v. Board. of Education of Topeka, Kansas*, 347
13 U.S. 483, 493, 74 S.Ct. 686, 98 L.Ed. 873 (1954) (public education is “a principal instrument in
14 awakening the child to cultural values”); *Abington School District v. Schempp*, 374 U.S. 203,
15 230 (1963) (Brennan, J., concurring) (public education is “the primary vehicle for transmitting
16 ‘the values on which our society rests’”); *McCullum v. Board of Education*, 333 U.S. 203, 216,
17 68 S.Ct. 461, 92 L.Ed. 649 (1948) (Frankfurter, J., concurring) (“The public school is ‘the most
18 powerful agency for promoting cohesion among a heterogeneous democratic people ... and the
19 most pervasive means for promoting our common destiny’”; RCW 28A.150.210 (expressly
20 listing “civics and history, including different cultures and participation in representative
21 government” in its specification of the knowledge and skills with which all students in this State
22 should be equipped).

23 107. With the above general background findings and conclusions in mind, this Court
24 now turns to some more specific background findings and conclusions concerning Article IX, §1
25 of the Washington State Constitution.
26

1 **C. SPECIFIC BACKGROUND:**
2 **Article IX, §1 of the Washington State Constitution**

3 **(a) Background Findings of Fact Concerning Article IX, §1**

4 108. The constitutional provision at the heart of this case is Article IX, §1 of our State
5 Constitution. That constitutional provision states in full:

6 It is the paramount duty of the state to make ample provision for the
7 education of all children residing within its borders, without distinction or
8 preference on account of race, color, caste, or sex.

9 Trial Exhibit 1.

10 **(b) Background Conclusions of Law Concerning Article IX, §1**

11 109. Washington law recognizes that the education duty specified in Article IX, §1 is
12 the only duty that is the State's paramount duty. As the Washington State Supreme Court has
13 held:

14 Careful examination of our constitution reveals that the framers declared
15 only once in the entire document that a specified function was the State's
16 paramount duty. That singular declaration is found in Constitution
17 Article IX, §1. Undoubtedly, the imperative wording was intentional.

18 *Seattle School District v. State*, 90 Wn.2d at 510-11 (underline added).

19 110. Washington law recognizes that no other State Constitution imposes a higher
20 education duty upon the State than Article IX, §1 of the Washington State Constitution does.
21 The Washington Supreme Court has held that the education duty mandated by Article IX, §1 "is
22 unique among State constitutions", and that "No other State has placed the common school on so
23 high a pedestal." *Seattle School District v. State*, 90 Wn.2d at 498 & 510-511.

24 111. Washington law holds that Article IX, §1 grants each child residing in this State a
25 constitutional right to the "education" specified in that provision. The Washington Supreme
26 Court has thus held with respect to Article IX, §1 that "all children residing within the borders of
the State possess a 'right', arising from the constitutionally imposed 'duty' of the State, to have
the State make ample provision for their education". *Seattle School District v. State*, 90 Wn.2d
at 511-512.

112. Washington law holds that the right to the “education” specified in Article IX, §1 is the paramount right granted to each child by our State Constitution. The Washington Supreme Court has accordingly held with respect to the mandate of Article IX, §1 that “since the ‘duty’ is characterized as Paramount the correlative ‘right’ has equal stature.” *Seattle School District v. State*, 90 Wn.2d at 511-512.

113. Washington law holds that Article IX, §1 imposes an affirmative, judicially enforceable duty upon the State. The Washington Supreme Court has thus held that Article IX, §1 “is mandatory and imposes a judicially enforceable affirmative duty” upon the State. *Seattle School District v. State*, 90 Wn.2d at 482 (underline added); accord, *Brown v. State*, 155 Wn.2d 254, 258 (2005) (Article IX, §1 “is substantive and enforceable” in the courts) (underline added).

114. With the above background findings and conclusions in mind, this Court now addresses each part of the four-part remedy Petitioners seek in this case and the fundamental question each part raises.

D. QUESTION #1 (DECLARATORY JUDGMENT):

What is the correct interpretation of “paramount”, “ample”, and “all” in Article IX, §1?

(a) Findings of Fact relating to the interpretation of “paramount”, “ample”, and “all” in Article IX, §1.

115. Article IX, §1 of the Washington State Constitution states:

It is the ***paramount*** duty of the state to make ***ample*** provision for the education of ***all*** children residing within its borders, without distinction or preference on account of race, color, caste, or sex.

Trial Exhibit 1 (bold italics added).

116. The parties in this case disagree on the meaning of the words “paramount”, “ample”, and “all” in the above constitutional provision. E.g., Petitioners’ Amended Petition at ¶108(a)-(c) and Respondent’s Amended Answer to that Amended Petition at ¶58.

1 **(b) Conclusions of Law concerning the legal interpretation of the words “paramount”,**
2 **“ample”, and “all” in Article IX, §1.**

3 **(i) Judicial branch’s duty to interpret words used in the State**
4 **Constitution.**

5 117. Washington law holds that it is the proper function of the judiciary to interpret,
6 construe, and enforce our Constitution. E.g., *Seattle School District v. State*, 90 Wn.2d at 482 (it
7 “is the proper function of the judiciary to interpret, construe and enforce the constitution of the
8 State of Washington.”).

9 118. Washington law holds that the judiciary must exercise its duty to interpret and
10 enforce our Constitution even when the judiciary’s interpretation of our Constitution is contrary
11 to the interpretation of another branch. As the Washington Supreme Court has accordingly
12 declared,

13 the judiciary has the ultimate power and the duty to interpret, construe and
14 give meaning to words, sections and articles of the constitution. It is
15 emphatically the province and duty of the judicial department to say what
16 the law is. This duty must be exercised even when an interpretation serves
17 as a check on the activities of another branch of government or is contrary
18 to the view of the constitution taken by another branch.

19 *Seattle School District v. State*, 90 Wn.2d at 503-504 (citations omitted, underline added),
20 similarly at 496-97.

21 119. Washington law holds that interpreting the words used in our State Constitution
22 presents a pure question of law for the court to resolve. E.g., *State v. Pulfrey*, 154 Wn.2d 517,
23 522 (2005) (interpreting State Constitution is a question of law); *Mt. Spokane Skiing v. Spokane*
24 *County*, 86 Wn.App. 165, 172 (1997) (“The interpretation of Washington constitutional
25 provisions is also a question of law”); *Humiston v. Meyers*, 61 Wn.2d 772, 777 (1963)
26 (construction or interpretation of a provision of the constitution is a judicial question).
Interpreting the words used in Article IX, §1 of the Washington State Constitution accordingly
presents a pure question of law for this Court to resolve.

1 120. Washington law holds that the words used in this State's Constitution must be
2 given their common English meaning – a meaning which is appropriately determined by
3 referring to the dictionary. *Zachman v. Whirlpool Financial*, 123 Wn.2d 667, 670-71 (1994) (“In
4 construing constitutional language, words are given their ordinary meaning unless otherwise
5 defined.... When the common, ordinary meaning is not readily apparent, it is appropriate to
6 refer to the dictionary.”); *Seattle School District v. State*, 90 Wn.2d at 511 (and thus at 511 and
7 512 quoting WEBSTER'S THIRD NEW INT'L DICTIONARY for the meaning of words used in
8 Article IX, §1).

9 (ii) “paramount”

10 121. WEBSTER'S THIRD NEW INT'L DICTIONARY is the dictionary that the Washington
11 Supreme Court used to interpret the meaning of words used in Article IX, §1. *Seattle School*
12 *District v. State*, 90 Wn.2d at 511 and 512n.12.

13 122. WEBSTER'S THIRD NEW INT'L DICTIONARY defines the word “paramount” to
14 mean “having a higher or the highest rank or authority” that is “superior to all others”.
15 WEBSTER'S THIRD NEW INT'L DICTIONARY (1993) at 1638.

16 123. The Washington Supreme Court has accordingly interpreted the word
17 “paramount” in Article IX, §1 as follows:

18 “Paramount” is not a mere synonym of “important.” Rather, it means superior in
19 rank above all others, chief, preeminent, supreme, and in fact dominant....

20 When a thing is said to be paramount, it can only mean that it is more important
21 than all other things concerned.

22 *Seattle School District v. State*, 90 Wn.2d at 511. This meaning of paramount is one of the
23 reasons the Washington Supreme Court has ruled that the education mandate in Article IX, §1 “is
24 unique among state constitutions”, and has held with respect to the Washington Constitution's
25 use of the word paramount: “Undoubtedly, the imperative wording was intentional.” *Seattle*
26 *School District v. State*, 90 Wn.2d at 498 and 510-11. The Washington Supreme Court has

1 accordingly held that the Respondent State must fully comply with Article IX, §1 as its “first
2 priority”. *Seattle School District v. State*, 90 Wn.2d at 518 (underline added).

3 124. This Court concludes that the word “paramount” in Article IX, §1 means what it
4 says. It means having the highest rank that is superior to all others, having the rank that is
5 preeminent, supreme, and more important than all others. It is not a mere synonym of
6 “important”. The word “paramount” means that the State must fully comply with its duty under
7 Article IX, §1 as its first priority before all others. Article IX, §1 accordingly requires the
8 Respondent State to amply provide for the education of all Washington children as the State’s
9 first and highest priority before any other State programs or operations.

10 (iii) “ample”

11 125. WEBSTER’S THIRD NEW INT’L DICTIONARY is the dictionary that the Washington
12 Supreme Court used to interpret the meaning of words used in Article IX, §1. *Seattle School*
13 *District v. State*, 90 Wn.2d at 511 and 512n.12.

14 126. WEBSTER’S THIRD NEW INT’L DICTIONARY defines the word “ample” to mean
15 “more than adequate”, and explains that the word “AMPLE always means considerably more
16 than adequate or sufficient.” WEBSTER’S THIRD NEW INT’L DICTIONARY (1993) at 74 (underline
17 added).

18 127. Consistent with this meaning, the Washington Supreme Court has held that
19 Article IX, §1 requires the Respondent State to provide “fully sufficient funds” and a “level of
20 funding that is fully sufficient” to provide for the education of all Washington children. *Seattle*
21 *School District v. State*, 90 Wn.2d at 518 & 537 (emphasis added). Further confirming this
22 broad meaning of “ample”, the Washington Supreme Court expressly held that it was therefore
23 unconstitutional for the Respondent State to rely on local levies to fund any part of the education
24 mandated by Article IX, §1. *Seattle School District v. State*, 90 Wn.2d at 526.

25 128. This Court concludes that the word “ample” in Article IX, §1 means what it says.
26 It means considerably more than just adequate or merely sufficient. Article IX, §1 accordingly

1 requires the State's provision for the education of all Washington children to be considerably
2 more than just adequate or merely sufficient to eke by. Article IX, §1 requires the Respondent
3 State's provision for the education of Washington children to be ample so no public school has to
4 turn to or rely upon local levies, PTA fundraisers, private donations, or other non-State sources
5 to provide all of its children the "education" specified in Article IX, §1.

6 (iv) "all"

7 129. WEBSTER'S THIRD NEW INT'L DICTIONARY is the dictionary that the Washington
8 Supreme Court used to interpret the meaning of words used in Article IX, §1. *Seattle School*
9 *District v. State*, 90 Wn.2d at 511 and 512n.12.

10 130. WEBSTER'S THIRD NEW INT'L DICTIONARY defines the word "all" to mean "every
11 member or individual component of", "each one of – used distributively with a plural noun or
12 pronoun to mean that a statement is true of every individual considered", and explains with
13 respect to a group or class: "of members of a class: each and every one of". WEBSTER'S THIRD
14 NEW INT'L DICTIONARY (1993) at 54 (underline added).

15 131. This Court concludes that the word "all" in Article IX, §1 means what it says. It
16 means "every" and "each and every one of". It encompasses each and every child since each
17 will be a member of, and participant in, this State's democracy, society, and economy.
18 Article IX, §1 accordingly requires the Respondent State to amply provide for the education of
19 every child residing in our State – not just those children who enjoy the advantage of being born
20 into one of the subsets of our State's children who are more privileged, more politically popular,
21 or more easy to teach.

22 132. Having ruled on the legal meaning of "paramount", "ample", and "all" in
23 Article IX, §1 of the Washington State Constitution, this Court now turns to the meaning of the
24 word "education" in that Constitutional provision.
25
26

1 **E. QUESTION #2 (DECLARATORY JUDGMENT):**

2 **What is the current legal meaning of the word “education” in Article IX, §1?**

3 **(a) Findings of Fact relating to the current legal meaning of the word “education” in**
4 **Article IX, §1.**

5 133. Article IX, §1 of the Washington State Constitution states:

6 It is the paramount duty of the state to make ample provision for the
7 **education** of all children residing within its borders, without distinction or
8 preference on account of race, color, caste, or sex.

9 Trial Exhibit 1 (bold italics added).

10 134. The parties in this case disagree on the current legal meaning of the word
11 “education” in the above constitutional provision. E.g., Petitioners’ Amended Petition at ¶108(d)
12 and Respondent’s Amended Answer to that Amended Petition at ¶58.

13 135. The following paragraphs outline what this Court finds to be three major
14 historical mileposts along the evolutionary road that has led to the current legal meaning of the
15 word “education” in Article IX, §1 of the State Constitution.

16 **(i) First Milepost (1978): State Supreme Court establishes the**
17 **minimum knowledge and skills encompassed by the term**
18 **“education” in Article IX, §1 [a “basic education”]**

19 136. The Washington Supreme Court issued its *Seattle School District* ruling against
20 the Respondent State in 1978. *Seattle School District No. 1 v. State*, 90 Wn.2d 476 (1978).

21 137. That Supreme Court ruling specified the following with respect to the **minimum**
22 of the “education” constitutionally required by Article IX, §1:

23 [T]he State’s constitutional duty goes beyond mere reading, writing and
24 arithmetic. It also embraces broad educational opportunities needed in the
25 contemporary setting to equip our children for their role as citizens and as
26 potential competitors in today’s market as well as in the market place of ideas.
Education plays a critical role in a free society. It must prepare our children to
participate intelligently and effectively in our open political system to ensure that
system’s survival. It must prepare them to exercise their First Amendment
freedoms both as sources and receivers of information; and, it must prepare them
to be able to inquire, to study, to evaluate and to gain maturity and understanding.
The constitutional right to have the State “make ample provision for the education
of all (resident) children” would be hollow indeed if the possessor of the right
could not compete adequately in our open political system, in the labor market, or

1 in the market place of ideas.... The effective teaching ... of these essential skills
2 make up the ***minimum*** of the education that is constitutionally required.

3 *Seattle School District v. State*, 90 Wn.2d at 517-18 (bold italics in original).

4 138. That 1978 Supreme Court ruling referred to the substantive skills broadly
5 described in the above ruling as being a “basic education”. *Seattle School District v. State*, 90
6 Wn.2d at 519. That 1978 ruling provided the Respondent State could further define that “basic
7 education” with additional substantive content beyond the knowledge and skills described above
8 because that description was not “fully definitive of the State’s paramount duty”. *Seattle School*
9 *District v. State*, 90 Wn.2d at 518-19 (underline added)).

10 That 1978 Supreme Court ruling accordingly provided that the Respondent State was to
11 (1) define additional substantive content for the above-described “basic education”, and
12 (2) define a “program of basic education” to provide that substantive content to all Washington
13 children. The Supreme Court’s language repeatedly made it clear that “basic education” and
14 “basic program of education” are not synonyms. Instead, they are two distinct terms. E.g., 90
15 Wn.2d at 482 (“The Legislature must act to carry out its constitutional duty by defining and
16 giving substantive content to ‘basic education’ and a basic program of education”) (underline
17 added), at 519 (noting that in 1978 the legislature had not yet passed legislation “defining or
18 giving substantive content to ‘basic education’ or a basic program of education. Thus, the
19 Legislature must hereafter act to comply with its constitutional duty by defining and giving
20 substantive meaning to them.”) (underlines added), and at 537 (“We have great faith in the
21 Legislature and its ability to define ‘basic education’ and a basic program of education”)
22 (underline added).

23 139. In short, “basic education” is substance – the ***minimum***, basic knowledge and
24 skills described by the Supreme Court’s above quoted ruling. A “basic program of education”,
25 on the other hand, is exactly what it’s called – a program instituted to deliver that substance.
26 This distinction is important. And as subsections (ii) & (iii) below explain, this Court finds that

1 in the years following the 1978 *Seattle School District* decision, the Respondent State did in fact
2 define additional substantive content for a “basic education” in Washington that goes beyond the
3 *minimum*, basic knowledge and skills described by the Supreme Court’s above quoted ruling.

4 (ii) *Second Milepost (1993): State legislature enacts*
5 *House Bill 1209, which specifies additional substantive content*
6 *beyond the “minimum” substance established by the State*
7 *Supreme Court’s 1978 ruling.*

8 140. After the Washington Supreme Court’s 1978 *Seattle School District* ruling, the
9 Respondent engaged in many years of study to determine substantive standards for the education
10 that children need in order to be adequately equipped for their role as citizens in our State’s
11 democracy, and as potential competitors in our State’s open political system, in today’s labor
12 market, and in the market place of ideas.

13 141. In 1993, the State legislature enacted House Bill 1209 as a result of those many
14 years of study.

15 142. The first section of House Bill 1209 explained that law’s intent to establish
16 substantive student performance standards for Washington’s education system, stating that:

17 The legislature finds that student achievement in Washington must be improved
18 to keep pace with societal changes, changes in the workplace, and an increasingly
19 competitive international economy.

20 To increase student achievement, the legislature finds that the state of Washington
21 needs to develop a public school system that focuses more on the educational
22 performance of students....

23 The legislature further finds that improving student achievement will require
24 (1) Establishing what is expected of students, with standards set at internationally
25 competitive levels....

26 Trial Exhibit 14 and 133 (House Bill 1209, Sec. 1) (underline added).

143. The next section of House Bill 1209 specified the substantive content for those
student performance standards, specifically establishing the following four areas of substantive
knowledge and skills that all Washington students need to be equipped with:

(1) Read with comprehension, write with skill, and communicate effectively
and responsibly in a variety of ways and settings;

- (2) Know and apply the core concepts and principles of mathematics; social, physical, and life sciences; civics and history; geography; arts; and health and fitness;
- (3) Think analytically, logically, and creatively, and to integrate experience and knowledge to form reasoned judgments and solve problems; and
- (4) Understand the importance of work and how performance, effort, and decisions directly affect future career and educational opportunities.

Trial Exhibits 14 and 133 (House Bill 1209, Sec. 101).

144. These substantive knowledge and skills specified in these four numbered provisions in House Bill 1209, Sec. 101 are codified as the four numbered provisions in §.210 of the Basic Education Act. RCW 28A.150.210(1)-(4).

145. The phrasing of the substantive knowledge and skills specified in the four numbered provisions of §.210 of the Basic Education Act was updated in 2007. That update occurred after the Final Report of the Respondent's 18-month Washington Learns study concluded that the State should "redefine basic education" by amending §.210 of the Basic Education Act. Although the 2007 legislature ultimately did not end up adopting the Washington Learns Report's recommended wording for that redefinition, it did slightly redefine the substantive skills specified in the four numbered provisions of §.210 by amending them as follows:

- (1) Read with comprehension, write ~~with skill~~ effectively, and communicate ~~effectively and responsibly~~ successfully in a variety of ways and settings and with a variety of audiences;
- (2) Know and apply the core concepts and principles of mathematics; social, physical, and life sciences; civics and history, including different cultures and participation in representative government; geography; arts; and health and fitness;
- (3) Think analytically, logically, and creatively, and to integrate ~~experience~~ different experiences and knowledge to form reasoned judgments and solve problems; and
- (4) Understand the importance of work and finance and how performance, effort, and decisions directly affect future career and educational opportunities.

Redline of Engrossed Second Substitute Senate Bill (E2SSB) 5841, Sec. 1 [Trial Exhibit 687].

146. The 2007 update of the four numbered provisions in Basic Education Act §.210 did not water down or lower the substantive educational standards previously established by the enactment of House Bill 1209 in 1993.

147. The knowledge and skills originally specified in the four numbered provisions of House Bill 1209 (now codified in §.210 of the Basic Education Act) are in fact the substantive content of what drives education in this State. Those four numbered provisions specify basic knowledge and skills that the State has determined a child needs to possess to be equipped to succeed in today's world. This Court accordingly finds that the four numbered provisions of Basic Education Act §.210 do in fact provide additional substantive content for the basic education of our State's children beyond the *minimum* substantive skills described by the Washington Supreme Court in its previously quoted, 1978 *Seattle School District* ruling.

(iii) Third Milepost: State adopts Essential Academic Learning Requirements based on House Bill 1209, which specify additional substantive content beyond the "minimum" substance established by the State Supreme Court's 1978 ruling

148. After the legislature enacted the above four numbered provisions in Basic Education Act §.210, the State established Essential Academic Learning Requirements (EALRs) for eight core academic subjects. Those eight core subjects are:

- (1) Science;
- (2) Mathematics;
- (3) Reading;
- (4) Writing;
- (5) Communication;
- (6) Social Studies: civics, economics, geography, & history;
- (7) Arts; and
- (8) Health & Fitness.

Relatively recently, the State also established Essential Academic Learning Requirements (EALRs) for a ninth core academic subject:

- (9) Educational Technology.

1
2 149. The Respondent adopted this State's Essential Academic Learning Requirements
3 (EALRs) in order to more specifically describe the basic skills established by the four numbered
4 provisions of Basic Education Act §.210. The State's Essential Academic Learning
5 Requirements (EALRs) are part of the academic instruction that the State requires for all
6 Washington students. They specify basic skills and knowledge in core subject areas that the
7 State expects all students to master as they move through Washington's public schools, so those
8 children can be equipped to compete in today's world. The State's Essential Academic Learning
9 Requirements specify basic knowledge and skills that the State has determined a child needs to
10 possess to be equipped to succeed in today's world. This Court accordingly finds that the State's
11 Essential Academic Learning Requirements do in fact provide additional substantive content for
12 the basic education of our State's children beyond the *minimum* substantive skills described by
13 the Washington Supreme Court in its previously quoted, 1978 *Seattle School District* ruling.

14 ***(b) Conclusions of Law relating to the current legal meaning of the word "education" in Article IX, §1.***

15 150. As noted earlier, it is the duty of the judiciary to interpret, construe, and enforce
16 our State Constitution – a duty the judiciary must exercise even when its interpretation of the
17 Constitution is contrary to that taken by another branch. And, as also noted earlier, interpreting
18 the words used in Article IX, §1 presents a pure question of law for the judicial branch to
19 resolve. With those two fundamental legal principles in mind, this Court now turns to
20 interpreting the legal meaning of the term "education" in Article IX, §1.

21 ***(i) The minimum meaning of the word "education" established by***
22 ***the Washington Supreme Court.***

23 151. The Washington Supreme Court has held the following with respect to the
24 substantive content of the "education" mandated by Article IX, §1:

25 [T]he State's constitutional duty goes beyond mere reading, writing and
26 arithmetic. It also embraces broad educational opportunities needed in the
contemporary setting to equip our children for their role as citizens and as
potential competitors in today's market as well as in the market place of ideas.

1 Education plays a critical role in a free society. It must prepare our children to
2 participate intelligently and effectively in our open political system to ensure that
3 system's survival. It must prepare them to exercise their First Amendment
4 freedoms both as sources and receivers of information; and, it must prepare them
5 to be able to inquire, to study, to evaluate and to gain maturity and understanding.
The constitutional right to have the State "make ample provision for the education
of all (resident) children" would be hollow indeed if the possessor of the right
could not compete adequately in our open political system, in the labor market, or
in the market place of ideas.

6 *Seattle School District v. State*, 90 Wn.2d 476, 517-18 (1978) (underlines added).

7 152. This trial court is bound by the above ruling of the Washington Supreme Court.

8 This trial court accordingly concludes that "education" mandated by Article IX, §1:

- 9 (a) includes the reading, writing, and arithmetic skills needed to compete in today's
10 contemporary setting;
11 (b) also goes beyond merely the reading, writing, and arithmetic skills needed to
12 compete in today's contemporary setting;
13 (c) must equip the children of this State to intelligently and effectively compete in
14 today's economy and labor market;
15 (d) must equip the children of this State to intelligently and effectively compete in
16 today's market place of ideas;
17 (e) must prepare the children of this State to intelligently and effectively participate
18 in this State's open political system;
19 (f) must prepare the children of this State to intelligently and effectively exercise
20 their First Amendment freedoms – both in communicating information to others
21 as well as understanding information communicated from others;
22 (g) must equip the children of this State to meaningfully perform their roles as
23 citizens in this State's democracy; and
24 (h) must prepare the children of this State to be able to inquire, to study, to evaluate,
25 and to gain maturity and understanding in today's contemporary setting.
26

153. The Washington Supreme Court referred to the above as being "essential skills"
in this State's democracy, and held that

the effective teaching ... of these essential skills make up the *minimum* of the
education that is constitutionally required.

1 *School District v. State*, 90 Wn.2d 476, 518 (1978) (***bold italics in original***; underline added).
2 This Court accordingly concludes that the skills described above are essential skills in our
3 democracy, and that the effective teaching of those essential skills make up the ***minimum*** of the
4 “education” that is constitutionally required by Article IX, §1.

5
6 (ii) ***The additional specification of basic knowledge and skills added***
7 ***by the State legislature’s enactment of the four numbered***
8 ***provisions of House Bill 1209.***

9 154. As noted earlier, the Supreme Court referred to the substantive skills broadly
10 described in its above 1978 *Seattle School District* ruling as being a “basic education”, and
11 provided that the Respondent State could further define that “basic education” with additional
12 substantive content beyond the knowledge and skills described in the Supreme Court ruling
13 quoted above because that description was not “fully definitive of the State’s paramount duty”.
14 *Seattle School District v. State*, 90 Wn.2d at 518-19 (underline added)).

15 155. This Court concludes that the legislature complied with the *Seattle School District*
16 Court’s direction to further define “basic education” with additional substantive content beyond
17 the substantive knowledge and skills described in the Supreme Court ruling quoted above. This
18 Court concludes the legislature did that by specifying the basic knowledge and skills specified in
19 the four numbered provisions of House Bill 1209 (now §.210(1)-(4) of the Basic Education Act,
20 RCW 28A.150.210(1)-(4)).

21 156. This Court accordingly concludes that the basic knowledge and skills specified in
22 the four numbered provisions of House Bill 1209 (now §.210(1)-(4) of the Basic Education Act,
23 RCW 28A.150.210(1)-(4)) are an additional, substantive component of the current legal
24 definition of the basic “education” required under Article IX, §1.

1 (iii) *The additional specification of basic knowledge and skills added*
2 *by the State's adoption of the Washington's Essential Academic*
3 *Learning Requirements (EALRs).*

4 157. This Court concludes that after the State enacted the above four numbered
5 provisions of House Bill 1209, the State complied further with the *Seattle School District*
6 ruling's direction to further define "basic education" with additional substantive content beyond
7 the knowledge and skills described in the Supreme Court ruling quoted above. This Court
8 concludes that the State did that by adopting the basic knowledge and skills specified in the
9 State's Essential Academic Learning Requirements (EALRs).

10 158. This Court accordingly concludes that the basic knowledge and skills specified in
11 the State's Essential Academic Learning Requirements (EALRs) are an additional, substantive
12 component of the current legal definition of the basic "education" required under Article IX, §1.

13 (iv) *Conclusion regarding the current legal meaning of the word*
14 *"education" in Article IX, §1 of the Washington Constitution.*

15 159. The word "education" in Article IX, §1 is substantive. It means the basic
16 knowledge and skills needed to compete in today's economy and meaningfully participate in this
17 State's democracy. Today, the current definition of that requisite knowledge and skill under
18 Washington law is defined by the following:

19 (a) at *minimum*, the substantive skills specified by the Washington Supreme Court in
20 the *Seattle School District* ruling that is quoted in subsection (i) above [90 Wn.2d 476, 517-18
21 (1978)];

22 (b) the basic knowledge and skills enacted by the State in the four numbered
23 provisions of House Bill 1209 that are discussed in subsection (ii) above [now §.210(1)-(4) of the
24 Basic Education Act, RCW 28A.150.210(1)-(4)]; and

25 (c) the basic knowledge and skills established by the State in the Essential Academic
26 Learning Requirements that are discussed in subsection (iii) above [the State's "EALRs"].

1 160. Having now ruled on the current legal meaning of “education”, “paramount”,
2 “ample”, and “all” in Article IX, §1 of the Washington Constitution, this Court now turns to the
3 issue of whether the Respondent State is, or is not, complying with its legal duty under this
4 Court’s interpretation of the language in that constitutional provision.

5
6 **F. QUESTION #3 (DECLARATORY JUDGMENT):**
7 **Is the Respondent State currently complying with its legal duty under this Court’s**
8 **interpretation of the language in Article IX, §1?**

9 161. The parties disagree on whether the Respondent State is currently complying with
10 its legal duty under Article IX, §1.

11 The Respondent asserts it is.

12 Petitioners assert that the Respondent is not.

13 This Court accordingly answers that “yes” or “no” question.

14 **(a) Findings of Fact relating to whether the State is currently complying with its legal duty**
15 **under this Court’s interpretation of the language in Article IX, §1.**

16 162. The Respondent State uses arithmetic equations (program “funding formulas”) to
17 calculate a dollar number for an annual dollar “allocation” to the Respondent State’s public
18 schools. Those arithmetic equations, however, are not correlated to what it actually costs to
19 operate this State’s public schools. Those arithmetic equations are not correlated to what it
20 would cost this State’s public schools to equip all children with the basic knowledge and skills
21 mandated by this State’s minimum education standards (e.g., the State’s Essential Academic
22 Learning Requirement). Those arithmetic equations are not correlated to what it would currently
23 cost this State’s public schools to equip all children with the basic knowledge and skills included
24 within the substantive “education” mandated by Article IX, §1. In short, the Respondent State’s
25 arithmetic equations do not determine the amount of resources actually required to amply
26 provide for the education of all children residing within this State’s borders.

1 163. The actual cost of operating the State's public schools is significantly higher than
2 the amount of resources provided by the Respondent State's arithmetic equations (program
3 "funding formulas"). This fact is confirmed by the Respondent State's studies and public
4 documents. It is confirmed by the Respondent State's education and finance personnel. And, as
5 another example, it is confirmed by Superintendents of focus districts in this case.

6 164. The actual cost of equipping all children residing in this State with the basic
7 knowledge and skills mandated by this State's minimum education standards (e.g., the State's
8 Essential Academic Learning Requirement) is significantly higher than the amount of resources
9 provided by the Respondent State's arithmetic equations (its program "funding formulas"). This
10 fact is confirmed by the Respondent State's studies and public documents. It is confirmed by the
11 Respondent State's education and finance personnel. And, as another example, it is confirmed
12 by Superintendents of focus districts in this case.

13 165. The actual cost of equipping all children residing in this State with the basic
14 knowledge and skills included within the substantive "education" mandated by Article IX, §1 is
15 significantly higher than the amount of resources provided by the Respondent State's arithmetic
16 equations (program "funding formulas"). This fact is confirmed by the Respondent State's
17 studies and public documents. It is confirmed by the Respondent State's education and finance
18 personnel. And, as another example, it is confirmed by Superintendents of focus districts in this
19 case.

20 166. In short, the Respondent State's arithmetic equations (program "funding
21 formulas") produce far less than the resources actually required to amply provide for the
22 education of all children residing within this State's borders. The Respondent State's arithmetic
23 equations (program "funding formulas") do not make ample provision for the facilities and
24 services needed to equip all children residing in this State with the basic knowledge and skills
25 included within the "education" mandated by Article IX, §1. These facts are confirmed by the
26 Respondent State's studies and public documents. They are confirmed by the Respondent

1 State's education and finance personnel. And, as another example, they are confirmed by
2 Superintendents of focus districts in this case.

3 167. The level of resources provided to the Respondent State's public schools,
4 moreover, is not stable and dependable from year to year. The Respondent State does not
5 provide its public schools stable and dependable resources to fund the actual cost of operating
6 the State's public schools. The Respondent State does not provide its public schools stable and
7 dependable ample resources to equip all children with the basic knowledge and skills mandated
8 by this State's minimum education standards (e.g., the State's Essential Academic Learning
9 Requirement). The Respondent State does not provide its public schools stable and dependable
10 ample resources to equip all children with the basic knowledge and skills included within the
11 substantive "education" mandated by Article IX, §1. These facts are confirmed by the
12 Respondent State's studies and public documents. They are confirmed by the Respondent
13 State's education and finance personnel. And, as another example, they are confirmed by
14 Superintendents of focus districts in this case.

15 168. The Respondent State's arithmetic equations (program "funding formulas") leave
16 the State's public schools to rely heavily on local levies to be able to operate. The Respondent's
17 arithmetic equations leave the State's public schools to rely heavily on local levies to fund their
18 teaching of the basic knowledge and skills mandated by this State's minimum education
19 standards (e.g., the State's Essential Academic Learning Requirement). The Respondent's
20 arithmetic equations leave the State's public schools to rely heavily on local levies to fund their
21 teaching of the basic knowledge and skills included within the substantive "education" mandated
22 by Article IX, §1. These facts are confirmed by the Respondent State's studies and public
23 documents. They are confirmed by the Respondent State's education and finance personnel.
24 And, as another example, they are confirmed by Superintendents of focus districts in this case.

25 169. Even with the local levies and the other non-State resources that school districts
26 scrape together from year to year, the State's public schools are failing to equip all children

1 residing in this State with the basic knowledge and skills mandated by this State's minimum
2 education standards (e.g., the State's Essential Academic Learning Requirement). The State's
3 public schools are failing to equip all children residing in this State with the basic knowledge and
4 skills included within the substantive "education" mandated by Article IX, §1. These facts are
5 confirmed by the Respondent State's own testing of the education that has been provided to this
6 State's public school children (the Washington Assessment of Student Learning, or "WASL").
7 These facts are confirmed by the high school drop out rates in the State's public schools. These
8 facts are confirmed by the significant gaps in the education of lower income and minority
9 students in the Respondent's public schools compared to the education of those students' more
10 privileged counterparts. These facts are confirmed by the Respondent State's studies and public
11 documents. These facts are confirmed by the Respondent State's education personnel. And, as
12 another example, these facts are confirmed by Superintendents of focus districts in this case.

13 170. In short, the Respondent is not amply providing for the actual cost of operating
14 the State's public schools. The Respondent is not amply providing for the equipping of all
15 children residing in this State with the basic knowledge and skills mandated by this State's
16 minimum education standards. The Respondent is not amply providing for the equipping of all
17 children residing in this State with the basic knowledge and skills included within the substantive
18 "education" mandated by Article IX, §1.

19 **(b) Conclusions of Law relating to whether the State is currently complying with its legal**
20 **duty under this Court's interpretation of the language in Article IX, §1**

21 171. The provisions of the Washington State Constitution are mandatory.
22 Article I, §29 ("The provisions of this Constitution are mandatory, unless by express words they
23 are declared to be otherwise."); *T.S. v. Boy Scouts of America*, 157 Wn.2d 416, 434 (2006); *City*
24 *of Seattle v. Mighty Movers*, 152 Wn.2d 343, 372 (2004). The Respondent State has no
25 discretion in whether or not it will comply with the duties mandated by the Washington State
26 Constitution. *Benjamin v. Washington State Bar Association*, 138 Wn.2d 506, 549 (1999)

1 (“Mandatory means *mandatory*.”) (italics in original). Simply put, the State of Washington must
2 comply with the Constitution of Washington.

3 172. As explained earlier, the Washington Supreme Court holds that since
4 Article IX, §1 of the Washington Constitution establishes the State’s paramount constitutional
5 duty, Article IX, §1 also establishes a corresponding paramount constitutional right on the part of
6 all children residing within our State’s borders. *Seattle School District v. State*, 90 Wn.2d at
7 511-512 (“all children residing within the borders of the State possess a ‘right’, arising from the
8 constitutionally imposed ‘duty’ of the State, to have the State make ample provision for their
9 education”, and “since the ‘duty’ is characterized as Paramount the correlative ‘right’ has equal
10 stature”). The Respondent’s constitutional duty to amply provide for equipping all children with
11 the basic knowledge and skills established by the current definition of the “education” required
12 by Article IX, §1 is therefore a solid constitutional floor below which the Respondent State
13 cannot lawfully go.

14 173. There is no loophole in the Washington Constitution that allows the Respondent
15 State’s provision for the education of this State’s children to be “slightly unconstitutional” under
16 Article IX, §1. The Respondent’s current system of providing for the education of this State’s
17 children is either constitutional, or it’s not. As a sister court noted in a constitutional challenge
18 to that State’s education system:

19 This case involves the fundamental law of our land and this Court has no
20 discretion whatsoever in whether it will be enforced and preserved. There is no
21 higher duty of any judicial officer than to see to the adherence of government to
our Constitutions. There is no such thing as “a little bit pregnant” and there is no
such thing as “slightly unconstitutional.”

22 *Montoy v. State of Kansas* (case No. 99-C-1738, Shawnee County District Court, Memorandum
23 Decision dated December 2, 2003, at second-to-last page).

24 174. The same Constitutional principle holds true here. This case involves the
25 fundamental Constitutional law of our State, and this Court has no discretion whatsoever in
26 whether the mandate of Article IX, §1 will be enforced and preserved. There is no higher duty of

1 any judicial officer than to ensure the government's adherence to our Constitution. There is no
2 such thing as "a little bit pregnant", and there is no such thing as "slightly unconstitutional"
3 under Article IX, §1.

4 175. The People of our State have not diluted our Constitution with a "failure's fine"
5 exception to the Respondent State's Constitutional duties. This principle especially applies when
6 the Constitutional duty at issue is the one and only duty that the People of this State enshrined as
7 the Respondent's paramount Constitutional duty.

8 176. The question of whether the Respondent is currently complying with its legal duty
9 under this Court's interpretation of the language in Article IX, §1 is therefore a binary yes-or-no
10 question. The Respondent either is fully complying with its paramount Constitutional duty, or it
11 is not.

12 177. The Respondent cannot evade this yes-or-no question of whether it is currently
13 complying with its legal duty under Article IX, §1 by debating the extent or size of its violation
14 of that legal duty. A defendant's disputing the extent or size of the defendant's legal violation
15 does not negate the existence of that violation.

16 178. The Respondent cannot evade the yes-or-no question of whether it is currently
17 complying with its legal duty under Article IX, §1 by insisting that it intends to cease its legal
18 violation some time in the future. Thus, the Respondent State's assertions about what it hopes
19 future State legislatures might chose to do over the course of the next nine years under the
20 current version of ESHB 2261 are not relevant to the legal issue at hand. A defendant's intent to
21 cease its legal violation some day does not negate the existence of the defendant's violation this
22 day.

23 179. Nor can the Respondent evade the yes-or-no question of whether it is currently
24 complying with its legal duty under Article IX, §1 by blaming others such as the State's school
25 districts. Article IX, §1 imposes its paramount education duty upon the State – not upon others
26 such as the State's school districts. E.g., *Tunstall v. Bergeson*, 141 Wn.2d 201, 232 (2000)

1 (“school districts have no duty under Washington’s constitution. Article IX makes no reference
2 whatsoever to school districts.”). Washington law instead holds that the State’s school districts
3 are the State’s agents in providing education to the children of this State. *Bellevue School*
4 *District v. Brazier*, 103 Wn.2d 111, 116 (1984) (“The state has ... made the local school district
5 its corporate agency for the administration of a constitutionally required system of free public
6 education”). And Washington law holds that the principle cannot shift responsibility to its agent.
7 E.g., *Orion Corp. v. State*, 109 Wn.2d 621, 643-44 (1987) (when County enacts regulation as
8 agent of the State, the State is liable for the County regulation’s unconstitutional taking because
9 “As the principal of an agent acting within its authority, the State must take full responsibility if
10 a taking occurred”).

11 180. Nor can the Respondent State evade the yes-or-no question of whether it is
12 currently complying with its legal duty under Article IX, §1 by claiming that school districts can
13 scraping by with non-State funds such as local levies. As explained earlier, the Washington
14 Supreme Court’s *Seattle School District* ruling against the Respondent State expressly held that
15 it is unconstitutional for the Respondent State to rely on local levies to fund any part of the
16 education mandated by Article IX, §1. *Seattle School District v. State*, 90 Wn.2d at 526. As the
17 Washington Supreme Court also explained, local levies are neither dependable nor regular
18 because they are “wholly dependent upon the whim of the electorate,” and are available only on
19 a temporary basis. 90 Wn.2d at 525. As the Washington Supreme Court accordingly held, that
20 “unstable statutory system destroys a district’s ability to plan for a known or definite funding
21 base for either the current year or for future years.” 90 Wn.2d at 525.

22 181. In short, the question of whether the Respondent is currently complying with its
23 legal duty under this Court’s interpretation of the language in Article IX, §1 is a binary yes-or-no
24 question. This Court concludes that the answer to that question is “no”. The Respondent is not
25 currently complying with its legal duty under Article IX, §1 of the Washington Constitution.
26

1 The Respondent State is not complying with its *paramount* constitutional duty to make *ample*
2 provision for the *education* of *all* children residing within the borders of this State.

3 182. This Court accordingly turns to the fourth and final part of the four-part remedy
4 that the Petitioners seek, and the question of what (if any) enforcement Order this Court should
5 enter to uphold and enforce the paramount duty imposed upon the State by our State
6 Constitution.

7 **G. QUESTION #4 (ENFORCEMENT ORDER):**
8 **What (if any) Order should this Court enter to uphold and enforce the State's legal**
9 **duty under Article IX, §1 of the Washington Constitution?**

10 183. The parties disagree on whether this Court should enter any enforcement Order
11 beyond the declaratory judgments sought above.

12 Petitioners contend that if this Court finds that the Respondent State is not complying
13 with its legal duty under this Court's interpretation of Article IX, §1, then this Court should
14 Order the Respondent to promptly establish (1) the actual cost of amply providing all
15 Washington children with the education mandated by this Court's interpretation of
16 Article IX, §1, and (2) how the Respondent will fully fund that actual cost with stable and
17 dependable State sources. Petitioners content that the Respondent State can comply with such an
18 enforcement Order by promptly implementing a State system that (1) determines the actual cost
19 of amply providing all Washington children with the education mandated by this Court's
20 interpretation of Article IX, §1, and (2) fully funds that actual cost with stable and dependable
21 State sources.

22 Petitioners contend that the above is a narrowly tailored Order that would require the
23 Respondent State to take two long overdue steps towards complying with the paramount duty
24 clause of our State Constitution.

25 The Respondent State respectfully disagrees.
26

1 **(a) Findings of Fact relating to the propriety of a Court Order.**

2 184. Over the past 30 years, Washington State Governors from Dan Evans and Dixie
3 Lee Ray through Gary Locke and Christine Gregoire have sincerely declared to the People of
4 this State their desire and intent to bring the Respondent into compliance with Article IX, §1 of
5 our State Constitution.

6 185. In the years after the Supreme Court's *Seattle School District* ruling against the
7 Respondent State, the legislature has conducted over 17 studies (not including research for
8 specific legislation or projects) to address the school financing concerns of the State's public
9 schools.

10 186. Since 1990 alone, the Respondent has also conducted over 100 K-12 education
11 finance studies.

12 187. Despite the Respondent State's many studies and expressions of good intentions
13 during the 30 years following the Supreme Court's *Seattle School District* ruling, the Respondent
14 has not fully determined (or fully funded) what it actually costs to operate this State's public
15 schools. The State has not determined (or funded) what it would cost the State's public schools
16 to equip all children with the basic knowledge and skills mandated by the State's minimum
17 education standards (e.g., the State's Essential Academic Learning Requirement). The State has
18 not determined (or funded) what it would cost the State's public schools to equip all children
19 with the basic knowledge and skills included within the substantive "education" mandated by
20 Article IX, §1. In short, despite the passage of over 30 since the Supreme Court's *Seattle School*
21 *District* ruling against the Respondent, the Respondent still has not determined the amount of
22 resources actually required to amply provide for the education of all children residing within this
23 State's borders.

24 188. Instead, as explained earlier, the Respondent uses arithmetic equations (program
25 "funding formulas") to calculate a dollar number for an annual dollar "allocation" to the
26 Respondent State's public schools – arithmetic equations that are not correlated to what it

1 actually costs to operate this State's public schools, what it would cost this State's public schools
2 to equip all children with the basic knowledge and skills mandated by this State's minimum
3 education standards (e.g., the State's Essential Academic Learning Requirement), or what it
4 would currently cost this State's public schools to equip all children with the basic knowledge
5 and skills included within the substantive "education" mandated by Article IX, §1.

6 189. The Respondent State has not designed or implemented a State system that
7 (1) determines the actual cost of amply providing all Washington children with the education
8 mandated by this Court's interpretation of Article IX, §1, and (2) fully funds that actual cost with
9 stable and dependable State sources.

10
11 ***(b) Conclusions of Law relating to the propriety of a Court Order***

12 190. As explained earlier, the Respondent State of Washington is required to comply
13 with the Constitution of Washington. E.g., Article I, §29 ("The provisions of this Constitution
14 are mandatory, unless by express words they are declared to be otherwise."); *Benjamin v.*
15 *Washington State Bar Association*, 138 Wn.2d 506, 549 (1999) ("Mandatory means
16 *mandatory.*") (italics in original).

17 191. An entire generation has passed through this State's public schools since the
18 Supreme Court's *Seattle School District* ruling against the Respondent over 30 years ago. The
19 Respondent State has no legally valid excuse to further delay or postpone its full compliance
20 with its paramount education duty under Article IX, §1.

21 192. Given the amount of time and study that the Respondent State has already
22 devoted to talking about complying with Article IX, §1 these past 30 years, the Respondent State
23 has no legally valid excuse to further delay or postpone its full compliance with Article IX, §1.

24 193. This Court accordingly Orders the Respondent State to complete the following
25 two steps towards compliance with its paramount duty under our State Constitution by no later
26 than one year from the date of this Order: (1) establish the actual cost of amply providing all

1 Washington children with the education mandated by this Court's interpretation of
2 Article IX, §1, and (2) establish how the Respondent will fully fund that actual cost with stable
3 and dependable State sources. The Respondent State can comply with this Order by
4 implementing within one year a State system that (1) determines the actual cost of amply
5 providing all Washington children with the education mandated by this Court's interpretation of
6 Article IX, §1, and (2) fully funds that actual cost with stable and dependable State sources.

7
8 **III. CONCLUSION**

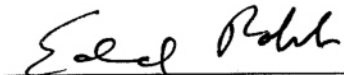
9 Counsel are directed to submit a form of Order consistent with these Findings Of Fact
10 And Conclusions Of Law by no later than _____, 2009.

11
12 DONE IN OPEN COURT this ____ day of _____, 2009.

13
14
15 _____
The Honorable John P. Erlick
State of Washington Superior Court Judge

16 Presented by:

17 FOSTER PEPPER PLLC

18 
19 _____
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21 Approved as to form and for entry;
22 Notice of presentation waived:
23 OFFICE OF THE WASHINGTON ATTORNEY GENERAL
ROBERT M. MCKENNA

24
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[PROPOSED] FINDINGS OF FACT & CONCLUSIONS OF LAW - 57

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[PROPOSED] FINDINGS OF FACT & CONCLUSIONS OF LAW - 58

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